

***Decision Notice and MEPA  
Environmental Assessment For***

---

**MDT - Pack and Company Land Exchange  
City of Kalispell  
Flathead County, Montana**

---

*Prepared For:*

**Pack and Company  
and  
Montana Department of Transportation**



---

*Prepared By:*

**Robert Peccia & Associates, Inc.  
Land & Water Consulting, Inc.**

MONTANA STATE LIBRARY



3 0864 0015 6607 7

DECISION NOTICE  
and  
FINDING OF NO SIGNIFICANT IMPACT (FONSI)

**MDT - PACK AND COMPANY LAND EXCHANGE  
MEPA ENVIRONMENTAL ASSESSMENT**

**City of Kalispell  
Flathead County, Montana**

**STATE DOCUMENTS COLLECTION**

**FEB 21 2001**

**MONTANA STATE LIBRARY,  
1515 E. 6th AVE.  
HELENA, MONTANA 59620**

**PROPOSAL**

The Montana Department of Transportation (MDT) and Pack and Company (Pack) are proposing an exchange of properties adjacent to U.S. Highway 93 north of Kalispell. Through this exchange, MDT would acquire an undeveloped 8.946-acre tract owned by Pack in exchange for 8.88-acres of MDT-owned land. MDT's property, locally known as the Hutton Pit, serves as a storage area for materials and equipment necessary for road maintenance activities and as a base for field engineering operations.

The proposed action is being advanced solely at the request of Pack. The exchange of property would allow Pack to consolidate landholdings in the vicinity of the NUPAC Sand and Gravel Company (a subsidiary of Pack) and convert the industrial property (NUPAC's gravel pit plus MDT's Hutton Pit site) to a commercial development. The proposed action would necessitate that MDT's maintenance equipment, facilities, and stockpiled materials be moved from the Hutton Pit site to a tract of land owned by Pack located approximately one mile to the north along the east side of U.S. Highway 93. The actions necessary to make the property suitable for MDT's operations and the costs of relocating MDT's existing equipment, facilities, and stockpiled materials would be Pack's responsibility. Pack's sand and gravel operations would eventually be transferred to another existing location within the Kalispell area.

The phased development of a retail shopping complex and a multi-purpose domed coliseum has been proposed for the 59.14-acre area comprised of NUPAC's sand and gravel operation and the adjoining Hutton Pit site. Conceptual plans for the development of the properties were presented to the City of Kalispell during 1998 and 1999. The City of Kalispell and Pack negotiated the terms and conditions of the property's development and each party ultimately signed a Planned Unit Development (PUD) Agreement in July 1999. According to the PUD Agreement, infrastructure for the proposed development must be substantially completed by July 1, 2006. Presently, there is no firm indication of the types of commercial businesses that may locate to the property or date when actual redevelopment of the property would begin. If development plans for the property change from that identified in the PUD Agreement, Pack must apply to the City of Kalispell Site Review Committee and/or the City Council for approval before proceeding with its planned actions.

For purposes of environmental analysis, it has been assumed that development will proceed as set forth in the PUD Agreement and that mitigation will also be accomplished as identified in that document.

## **PUBLIC PROCESS**

A news article announcing the signing of the agreement to exchange property between MDT and Pack was published in the March 12, 2000 edition of the *Daily InterLake*. The article described the basic terms of the agreement and provided a historical overview of development proposals for the NUPAC property. A reprint of the article from the *Daily InterLake*'s website was attached to the EA.

A "rough draft" EA was prepared and circulated to Pack and to staff at MDT for an internal review and comments during early July 2000. Comments obtained through this process were addressed and the content of the EA was revised as needed prior to being made available for public review.

In accordance with ARM 18.2.240, an opportunity for public review and comment on the EA was provided to the public and interested agencies. A notice announcing the availability of the EA was published in the July 21, 2000 edition of the *Daily InterLake*. The EA was made available for public comment from July 21, 2000 through August 21, 2000. Copies of the document were available for review at the Flathead County Library, MDT's Kalispell Area Office, NUPAC Sand and Gravel, and at MDT Environmental Services (Helena). Copies of the notice of availability for the EA and an Affidavit of Publication for the notice are attached.

The property Pack proposes to exchange with MDT lies in the Highway 93 North zoning district and in a Suburban Agricultural zone with a 10-acre minimum lot size requirement. The proposed use of this property for a MDT maintenance facility is not listed as a permitted or conditionally permitted land use in this Suburban Agricultural zone. Section 76-2-402, M.C.A., requires that a public hearing be held by the Flathead County Board of Adjustment when a use not specifically allowed by the zoning regulations is proposed by a government agency. The Board of Adjustment has no power to deny the use proposed by government but the hearing served as a forum for public comment on the proposed land use change.

Accordingly, a public hearing before the Flathead County Board of Adjustment was held on September 5, 2000 at 7:00 p.m. in the Flathead County Courthouse East. The purpose of the hearing was to obtain comments on the proposed relocation of MDT's maintenance and field engineering operations to Pack's property north of West Reserve Drive. A member of the Flathead Regional Development Office initially presented a staff report prior to the public hearing. A copy of the staff report is attached to this decision notice. The staff report includes proof that the hearing was duly advertised to the public and nearby property owners and presents additional information about layout of the proposed maintenance/field engineering facility.

Three members of the public offered comments on the proposal. Two people, including a property owner near the proposed relocation site, spoke in support of the action. One person affiliated with the Citizens for a Better Flathead spoke against the proposal. The comments against the proposal were similar to those expressed in an August 30, 2000 letter received from Citizens for a Better Flathead. Minutes from the September 5, 2000 public hearing and Board of Adjustment meeting are attached.

## **COMMENTS AND RESPONSES**

Two written comments were received on the proposed action during the EA comment period and are attached to this Decision Notice. MDT's Traffic Engineer commented that the land exchange would be considered a change in land use for the purposes of access to U.S. Highway 93, a

limited access facility. Pack must prepare a traffic impact study for its final development plans and submit it to MDT for review through the agency's System Impact process so appropriate access to the property can be determined. The EA acknowledged this requirement on pages 7 and 33.

The City of Kalispell's Director of Public Works provided a memorandum to the City Manager containing three comments on the EA. These comments and appropriate responses are provided below:

- 1. Section 2.01(A) of the PUD Agreement (attached to the EA as Appendix D) specifies that the development will conform to the provisions of the PUD Agreement and the documents and drawings annexed to the agreement. In this connection, Figure 4 of the EA is not in conformance with the PUD agreement. It is not the approved layout for development. The approved layout, drawing C1.2 attached to the PUD agreement, details a significantly higher density development.*

RESPONSE: FIGURE 4 does differ from Drawing C1.2 attached to the Planned Unit Development Agreement in the density of commercial development shown. Presently, there is no firm indication of the types of commercial businesses that may locate to the property and no commitments for building on the property have been received from any potential tenants. Pack's contacts with potential commercial tenants since the Planned Unit Development Agreement was signed suggest that some modification to the site development plan shown in Drawing C1.2 may be needed to better accommodate their operations. FIGURE 4 was developed as a simplified schematic drawing for a preliminary traffic impact study and represents an alternate layout of commercial uses on the site. In retrospect, it was confusing to show both figures in the EA.

Drawing C1.2 is the only approved preliminary layout for Pack's development site. If plans for the commercial development and layout of the property change from those identified in the Planned Unit Development Agreement, Pack must apply to the City of Kalispell Site Review Committee and/or the City Council to request approvals for any modifications or amendments to the Agreement. Section 5.01 of the Agreement (see page 20 in APPENDIX D) outlines procedures for amending or modifying the Agreement.

A new paragraph was added prior to the beginning of Section 10 on page 9 of the EA discussing Figure 4 and Drawing C1.2 in the Planned Unit Development Agreement. The text affirms that that Drawing C1.2 is the only approved preliminary layout for Pack's development site.

- 2. Following on 1, above, if the parcel(s) are developed as outlined in the PUD then the anticipated air and water pollution impacts and drainage impacts will actually be greater than implied by the incorrect information presented in Figure 4. The amount of this difference may be significant.*

RESPONSE: The anticipated levels of air and water pollution and storm drainage would differ if the property were developed to a commercial density less than that shown in Drawing C1.2. As indicated above, FIGURE 4 was prepared for use in a preliminary traffic impact evaluation. The principal difference in the figures is the distribution of commercial space (a few large retail stores versus more numerous smaller commercial buildings) on the property. The total area (gross square footage) devoted to commercial uses implied in FIGURE 4 does not vary substantially from that associated with preliminary layout shown in Drawing C1.2. Both have commercial areas in the magnitude of 350,000 gross square feet, provide comparable amounts of space for parking, and have similar access configurations.

The analyses and conclusions presented in the EA regarding air and water pollution and storm drainage (as well as for the other environmental impact categories) were based on the approved preliminary layout for the property (Drawing C1.2) and the mitigation identified in the Planned Unit Development Agreement. With the implementation of the identified mitigation measures, the impacts of this proposal would be mitigated to below the level of significance requiring an EIS.

3. *The document incorrectly states that there is no timetable for development. Section 2.01(F) 1 specifies that all infrastructure improvements specified in the PUD agreement shall be complete by July 1, 2006. Further, Section 2.01(C) specifies that the concrete batch plant shall be operated during the site development construction period but in no case for a term greater than five years after which it shall be removed.*

**RESPONSE:** Thank you for this correction. In response to this comment, changes were made to the text under **Estimated Construction/Commencement Date** on page 2 of the EA. The new text indicates that the estimated construction date for development on the NUPAC/Hutton Pit property is prior to July 1, 2006 and discusses when Pack's concrete batch plant must be removed from the property.

A letter from Mayre Flowers, Executive Director of the Citizens for a Better Flathead, with comments on the EA was also received on August 30, 2000 after the prescribed public comment period had ended. These comments were also reviewed and are attached to this Decision Notice.

Comments from Citizens for a Better Flathead are provided below along with a response.

1. *While this EA notes that the proposed relocation of MDOT's maintenance/field engineering facilities (MDOT facility) would convert agricultural land to industrial property it is surprisingly silent on identifying impacts of such relocation into a district where such facilities are not permitted. A governmental agency's exemption from zoning regulations should not preclude the need to consider alternatives that would locate this MDOT facility in a more appropriate site. This EA fails to adequately address other locations. It also fails to address why the only land to be considered is owned by the developer/owner of the gravel pit and if this represents a sound investment and return strategy for the state.*

**RESPONSE:** The EA discloses that land Pack proposes to exchange lies in the Highway 93 North Zoning District and that MDT's maintenance facility is not a permitted use in the SAG-10 zoning district. However, state law exempts governmental agencies from complying with zoning regulations but requires that MDT's proposed use of the property in the zoning district be discussed before the Board of Adjustment and that public comments be heard on the proposal. The proposed maintenance facility would be developed in an area where other conditionally-permitted uses (the maintenance facility for the Northern Pines golf course and a church) and where other industrial/governmental uses (Sonju's Auto Body and the National Guard Armory) already existed prior to the establishment of the SAG-10 zoning district. In compliance with state law, a public hearing on MDT's proposed use of land in the Highway 93 North Zoning District was held before the Board of Adjustment on September 5, 2000.

No other locations for relocating MDT's maintenance operations were discussed in the EA because the proposal being evaluated is the exchange of a specific parcel owned by Pack for the Hutton Pit property. The EA clearly indicates that this land exchange is being advanced solely for Pack's benefit. MDT did not initiate the proposed land exchange and would be content to continue operations from the existing site. By signing the Agreement to Exchange Real Estate

with Pack, MDT indicated its willingness to proceed with the proposed land exchange providing a nearby and suitable site was available. Certainly other locations in the Kalispell area would serve equally well (or possibly better) for MDT's maintenance operations; however, the focus of this EA is on the environmental effects of exchanging Pack's property for MDT's Hutton Pit site. This land exchange would allow MDT to operate from essentially the same area as it has since acquiring the Hutton Pit property in 1943.

Obviously, for Pack to proceed with the commercial development its proposing, title to the Hutton Pit property must first be secured. Planning for the proposed commercial development of NUPAC's land has included MDT's Hutton Pit property from its inception. The Hutton Pit site, as well as the adjoining NUPAC Sand and Gravel property, has been annexed into the City of Kalispell and both properties have been rezoned to allow for commercial uses. Drawing C1.2 in the Planned Unit Development Agreement (in APPENDIX D of the EA) shows the proposed commercial development and neither MDT's property nor its maintenance facilities are depicted on the drawing. This development proposal was found to be acceptable to the City provided the terms of the Planned Unit Development Agreement are met. The signing of the Agreement to Exchange Real Estate between MDT and Pack (See APPENDIX B of the EA) verified MDT's willingness to cooperate with the redevelopment of the area that includes the Hutton Pit site. With numerous commercial redevelopment proposals for this area, MDT's Hutton Pit maintenance facility appears ultimately destined to become a "nonconforming" use in this portion of Kalispell.

Other than the time and costs associated with MDT personnel helping to plan and administer the transfer of maintenance operations to a new site, the cost of relocating the maintenance facilities would be minimal to the State of Montana. Pack and Company would pay for and be responsible for constructing the necessary improvements to the relocation site and for transferring MDT's materials and equipment to the new site (see 8. Relocation Expenses on page 5 of APPENDIX B). Essentially, MDT should be able to cease operations at its existing location and move directly into the new maintenance facilities and continue its operations. The Agreement to Exchange Real Estate between MDT and Pack also states that Pack must pay the State the difference in value if MDT's property appraises at a higher value than the parcel offered by Pack. Pack is also responsible for costs associated with preliminary environmental studies and planning and meeting regulatory requirements. In return for title to the Hutton Pit property, MDT would receive a brand new maintenance facility on a nearby site to replace a facility that has been in operation for many decades. In short, the land exchange and the relocation of MDT's facilities would be done at a minimal cost to the State and to the full satisfaction of MDT.

2. *This EA fails to identify adequately the history and future needs for the continued service of this MDOT facility. It is important to provide an understanding of the importance of this MDOT facility into the long range planning needs of the MDOT and given changes in potential uses at such facilities. The public should be made aware of this information in order to adequately comment on this proposal.*

RESPONSE: Steve Herzog, MDT's Maintenance Chief in Kalispell, was contacted regarding the agency's future plans for the maintenance/field engineering facilities. He indicated that MDT has no plans to substantially change or cease its maintenance and field engineering operations in Kalispell. MDT has operated the Hutton Pit facility in its present manner for at least ten years and would continue similar operations at the proposed relocation site over the foreseeable future. Mr. Herzog did point out that changes in technology or maintenance practices in the future might require modifications to equipment or other features of the facility or dictate changes in operations at the site.

3. *This EA does not address mitigation needed to address past hazardous waste concerns at this facility at the newly proposed site.*

RESPONSE: Hazardous waste concerns with MDT's Hutton Pit property were reviewed in a Phase I Environmental Assessment Report prepared by Land & Water Consulting, Inc. in January 2000 examining the Hutton Pit property. The report summarized existing operations and facilities, identified sources of hazardous waste, and presented a historical overview of hazardous waste incidents on the property. The report noted a 1996 used oil tank release, an area of diesel-fuel contaminated soil, noted that a number of partially-filled drums of leaded paint were believed buried long ago on the property. The MDT facility is registered as a small generator of hazardous waste under the federal Resource Conservation and Recovery Act (RCRA) because the maintenance operations generate oil-based paint waste.

The report noted that the used oil spill had been completely cleaned up and the tank from which the leak occurred was removed. MDT has promptly initiated efforts to cleanup the area of diesel-contaminated soil and to investigate the buried paint drums on the Hutton Pit site. Remediation efforts will eliminate these hazardous waste concerns in the near future.

The Agreement to Exchange Real Estate between MDT and Pack specifies on page 5 (8. Relocation Expenses) that relocation includes "moving and replacing all current buildings and associated infrastructure, including materials and materials storage facilities, racks, tanks, fencing, office trailers, pads, power, septic, phones, computer line connections, radio and water along with any associated incidentals, ...".

MDT's maintenance operations have been and must continue to comply with all federal and state laws concerning hazardous materials and substances. To comply with these laws, MDT must ensure that hazardous materials are transported, stored, handled, and disposed of in the proper manner. The potential exists for hazardous materials to be spilled at the new site since MDT's operations require that these substances be occasionally used during maintenance activities. However, moving MDT's maintenance and field engineering facilities to a new location would not increase the potential for an accidental spill to occur.

4. *Due to the fact that an MEPA analysis has not yet been conducted for the Section 36 school trust land that sits across from this site and due to the fact that this EA refers repeatedly to the associated and cumulative impacts of these two developments, it seems important for this EA to consider the importance of placing this EA on hold until such time that the MEPA analysis on Section 36 can be properly conducted. Given the significant impacts from both of these projects it seems clear that an EIS will be warranted to more adequately assess the potential impacts that have been identified within this EA and others that may be identified. Collectively the development proposed for these two sites represents an area ten times the current downtown Kalispell business district and the potential for significant environmental, economic, and social impacts.*

RESPONSE: Ms. Flowers' comments are noted.

## **CHANGES TO THE EA AS A RESULT OF COMMENTS RECEIVED**

As a result of the written comments received during the public review period, the following changes to the EA for this proposed land exchange have been made:

**Page 2. Estimated Construction/Commencement Date.** The EA was modified to indicate that the estimated construction date for development on the NUPAC/Hutton Pit property is prior to July 1, 2006. An additional paragraph clarifying dates committed to in the Agreement was added stating:

According to Section 2.01(F) 1 of the Planned Unit Development Agreement (see page 5 in **APPENDIX D**), infrastructure improvements for the proposed development must be substantially completed on or before July 1, 2006 unless an extension is granted by the City Council. Section 2.01(C) of the Planned Unit Development Agreement (see page 4 in **APPENDIX D**), specifies that NUPAC's concrete batch plant and associated facilities can operate during site development construction but must be removed within 5 years after construction begins.

**Page 8.** Under the List of Agencies Consulted During Preparation of the EA, the reference for Darrin Kaufman should be -- Darrin Kaufman, Traffic Engineer (Missoula) -- written comments.

**Page 9.** A new paragraph was added prior to the beginning of Section 10 discussing the development proposal presented in Figure 4 and Drawing C1.2 in the Planned Unit Development Agreement. The paragraph reads as follows:

Please note that the proposed development shown in **FIGURE 4** differs slightly from Drawing C1.2 attached to the Planned Unit Development Agreement in **APPENDIX D**. Drawing C1.2 is the only approved preliminary layout for Pack's development site. Presently, there is no firm indication of the types of commercial businesses that may locate to the property. Pack's contacts with potential commercial tenants of the property suggest that some modification to the site development plan presented in Drawing C1.2 may be needed to better accommodate their operations. If development plans for the property change from that identified in the Planned Unit Development Agreement, Pack must apply to the City of Kalispell Site Review Committee and/or the City Council to request approvals for any modifications or amendments to the Agreement. Section 5.01 of the Agreement (see page 20 in **APPENDIX D**) outlines procedures for amending or modifying the Agreement.

**Page 16.** A new second paragraph was added under **Secondary and Cumulative Effects on Air and Water Resources-Surface Water Drainage Patterns and Runoff** stating:

Notable changes to the development plans for the property would require that storm drainage provisions be reevaluated and the designs for such facilities modified as necessary. Any modifications to storm drainage infrastructure would be subject to review and approval by the City of Kalispell and would be included in an amendment to the Planned Unit Development Agreement between the City and Pack.

**Page 18.** A new second paragraph was added under **Secondary and Cumulative Effects on Water Resources** stating:

Any substantial changes to the development plans for the property would require that water and sanitary sewer provisions be reevaluated and the designs for such facilities modified as necessary. Any modifications to such infrastructure items would be subject to review and approval by the City of Kalispell and would be included in an amendment to the Planned Unit Development Agreement between the City and Pack.

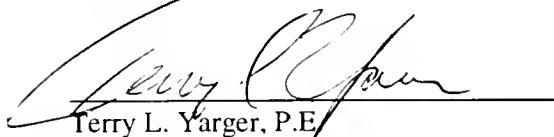
Page 33. The second full paragraph on the page was modified to identify future traffic impact study needs. The new paragraph reads:

It should be noted that Pack has prepared a Traffic Impact Study for the phased development of a commercial complex and multi-purpose coliseum on NUPAC land and MDT's Hutton Pit property. However, because this is a "preliminary" development proposal, MDT has not yet approved any changes to the design of U.S. Highway 93 or West Reserve Drive or changes to the operation of these traffic facilities. U.S. Highway 93 is a limited access facility in this area. Pack must prepare a traffic impact study for its final development plans and submit it for review through the agency's System Impact process so appropriate access to the property can be determined. MDT's Traffic Engineers must approve any proposed access locations, traffic signal modifications or new installations, and changes in lane use configurations on U.S. Highway 93.

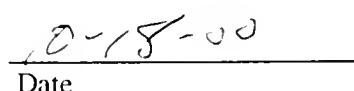
## **DECISION**

Based on the analysis in the Environmental Assessment (EA) and applicable laws, regulations and policies, I have determined that this action will not have a significant effect on the natural or human environment. Measures to mitigate the effects of the proposed land exchange and the eventual conversion of NUPAC's land (and MDT's Hutton Pit property) to commercial uses are outlined in the Agreement to Exchange Property between MDT and Pack and in the Planned Unit Development Agreement between Pack and the City of Kalispell. Implementing these measures would adequately mitigate the consequences of the proposed action to below the level of significance warranting the preparation of an EIS. Therefore, an Environmental Impact Statement will not be prepared for this proposed land exchange.

It is my decision to implement the proposed action. The EA made available for public review on July 21, 2000 will be accepted (with the above modifications and comments and responses) as the Final EA.



Terry L. Yarger, P.E.  
Engineering Bureau Chief  
Montana Department of Transportation  
Environmental Services



0-18-00

Date

The Final EA and this Decision Notice and FONSI may be viewed or obtained at:

Montana Department of Transportation  
Kalispell Area Office (see Steve Herzog)  
85 5th Ave East  
Kalispell, MT 59901

Pack and Company (NUPAC)  
2355 Highway 93 North  
Kalispell, MT 59901

MDT Environmental Services  
2701 Prospect Avenue  
P.O. Box 201001  
Helena, MT 59620-0701

Robert Peccia & Associates, Inc.  
825 Custer Avenue  
P.O. Box 5653  
Helena, MT 59604

## **NOTICE OF EA AVAILABILITY**



No. 3758  
NOTICE OF AVAILA-  
BILITY

MDT - PACK AND  
COMPANY LAND EX-  
CHANGE EA

An Environmental Assessment (EA) was recently prepared for a proposed land exchange between the Montana Department of Transportation (MDT) and Pack and Company (Pack). The proposed land exchange involves properties in both Flathead County and the City of Kalispell.

Under the proposal, MDT would acquire an undeveloped 8,946-acre tract owned by Pack in exchange for 8.88 acres of MDT land adjacent to the NUPAC Sand and Gravel Company (a subsidiary of Pack). MDT's property (locally known as the Hutton Pit) currently serves as a storage area for road maintenance materials and equipment and as a base for field engineering operations. The proposed action would require that MDT's maintenance equipment, facilities, and stockpiled materials be moved from the Hutton Pit site to a new site about one mile to the north along U.S. Highway 93. The costs and actions necessary to make the property suitable for MDT's operations and for relocating MDT's existing equipment, facilities, and stockpiled materials would be Pack's responsibility.

The proposed exchange would allow Pack to consolidate landholdings near the NUPAC Sand and Gravel Company and develop the property (NUPAC's existing land plus the Hutton Pit property) for commercial uses. The phased development of a retail shopping complex and a multi-purpose coliseum has been proposed for this area.

Prior to making any decision regarding the proposal, MDT is requesting public comments on the EA that evaluates the issues relevant to the land exchange. Copies of the EA are available for review at several locations including:

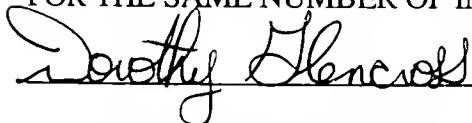
Flathead County Library  
(247 1st Ave E), Kalispell  
NUPAC Sand and Gravel  
(2355 Highway 93  
North), Kalispell  
MDT Area Office (85 5th  
Ave E), Kalispell  
MDT Environmental  
Services, Helena

Written comments on the EA will be received through August 21, 2000 and should be sent to the following address. Copies of the EA may also be obtained through written requests to the address below.

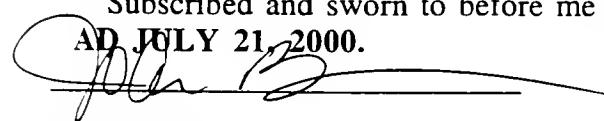
Daniel M. Norderud,  
ALCP  
Robert Peccia & Associates, Inc.  
P.O. Box 5653  
Helena, MT 59604

STATE OF MONTANA  
FLATHEAD COUNTY  
AFFIDAVIT OF PUBLICATION  
**DOROTHY GLEN CROSS BEING DULY  
SWORN, DEPOSES AND SAYS: THAT SHE IS  
LEGAL CLERK OF THE DAILY INTER LAKE, A  
DAILY NEWSPAPER OF GENERAL  
CIRCULATION, PRINTED AND PUBLISHED IN  
THE CITY OF KALISPELL, IN THE COUNTY OF  
FLATHEAD, STATE OF MONTANA, AND THAT  
NO. 3758 LEGAL ADVERTISEMENT WAS  
PRINTED AND PUBLISHED IN THE REGULAR  
AND ENTIRE ISSUE OF SAID PAPER, AND IN  
EACH AND EVERY COPY THEREOF ON THE  
DATES OF JULY 21, 2000,**

AND THE RATE CHARGED FOR THE ABOVE  
PRINTING DOES NOT EXCEED THE MINIMUM  
GOING RATE CHARGED TO ANY OTHER  
ADVERTISER FOR THE SAME PUBLICATION,  
SET IN THE SAME SIZE TYPE AND PUBLISHED  
FOR THE SAME NUMBER OF INSERTIONS.



Subscribed and sworn to before me this  
AD JULY 21, 2000.



Notary Public for the State of Montana  
Residing in Kalispell  
My Commission expires 5/30/03



## **COMMENTS RECEIVED ON EA**





# City of Kalispell

Post Office Box 1997 - Kalispell, Montana 59903-1997 - Telephone (406) 758-7700 - FAX (406) 758-7758

## MEMORANDUM

July 25, 2000

**To: Chris Kukulski, City Manager**

**From: Jim Hansz, Director of Public Works**

**Subject: Pack & Co. / MDT Land Exchange Environmental Assessment**

I have tried to review this document with respect to the finished product that would result from development of the property in accordance with the approved PUD. The proposed land exchange is a critical component to allow the further development of the property as detailed in the PUD agreement. In this regard:

1. Section 2.01 (A) of the PUD agreement (attached to the EA as appendix D) specifies that development will conform to the provisions of the PUD agreement and the documents and drawings annexed to the agreement. In this connection, Figure 4 of the EA is not in conformance with the PUD agreement. It is not the approved layout for development. The approved layout, drawing C1.2 attached to the PUD agreement, details a significantly higher density development.
2. Following on 1, above, if the parcel(s) are developed as outlined in the PUD then the anticipated air and water pollution impacts, and drainage impacts will actually be greater than implied by the incorrect information presented on Figure 4. The amount of this difference may be significant.
3. The document incorrectly states that there is no timetable for development. Section 2.01 (F) 1) specifies that all the infrastructure improvements specified in the PUD agreement shall be complete by July 1, 2006. Further, Section 2.01 (C) specifies that the concrete batch plant shall be operated during the site development construction period but in no case for a term greater than five years after which it shall be removed.

**Montana Department of Transportation  
Helena, Montana 59620-1001**

**Memorandum**

**To:** Terry L. Yarger, P.E.  
Chief, Engineering Bureau  
Environmental Services

**RECEIVED**

**From:** *DPD* Donald P. Dusek, P.E.  
Traffic Engineer

AUG 18 2000

ENVIRONMENTAL

**Date:** August 18, 2000

**Subject:** MDT – Pack and Company Land Exchange  
Kalispell

This is in response to the Environmental Assessment for the subject project. The proposed land exchange is in the southeast quadrant of the intersection of US 93 and West Reserve Drive. This land exchange would be considered a change in land use for the purposes of access to US 93. A traffic impact study will need to be completed and submitted through the System Impact process so appropriate access to the site can be determined. US 93 in this area is in a Limited Access facility.

Feel free to call Duane Williams at 444-9452 if you have questions.

DPD:DEW/TRF:packcom

**cc:** Loran Frazier  
C. S. Peil  
R. D. Morgan  
D. E. Williams  
S. S. Straehl  
Preconstruction File

Post-it® Fax Note		7671	Date	# of pages
To	<i>DPN/ND/ER/DO</i>			
Co/Dept	<i>TEC/</i>			
Phone #				
Fax #				

**Citizens for a Better Flathead**  
P.O. Box 771 • Kalispell, MT • 59903-0771  
(406) 756-8993 • FAX (406) 756-8991 • e-mail: [citizens@dewisys.net](mailto:citizens@dewisys.net)

August 29, 2000

**RECEIVED**

AUG 31 2000

Daniel M. Norderud, AICP  
Robert Peccia & Associates, Inc.  
P.O. Box 5653  
Helena, MT 59604

**ROBERT PECCIA  
& ASSOCIATES**

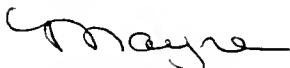
Re: EA comments on proposed land exchange between the Montana Department of Transportation and Pack and Company

Dear Mr. Norderud,

Thank you for visiting with me yesterday regarding this EA and your willingness to still accept comments on this. I regret that I entered the date for responding to you incorrectly and these comments are reaching you late. I appreciate your willingness to accept and consider them. Please consider the following comments in regard to the EA.

1. While this EA notes that the proposed relocation of MDOT's maintenance/field engineering facilities (MDOT facility) would convert agricultural land to industrial property it is surprisingly silent on identifying impacts of such relocation into a district where such facilities are not permitted. A governmental agency's exemption from zoning regulations should not preclude the need to consider alternatives that would locate this MDOT facility in a more appropriate site. This EA fails to adequately address other locations. It also fails to address why the only land to be considered is land owned by the developer/owner of the gravel pit and if this represents a sound investment and return strategy for the state.
2. This EA fails to identify adequately the history and future needs for the continued service of this MDOT's facility. It is important to provide an understanding of the importance of this MDOT facility into the long range planning needs of the MDOT and given changes in potential uses at such facilities. The public should be made aware of this information in order to adequately comment on this proposal.
3. This EA does not address mitigation needed to address past hazardous waste concerns at this facility at the newly proposed site.
4. Due to the fact that an MEPA analysis has not yet been conducted for the Section 36 school trust land that sits across from this site and due to the fact that this EA refers repeatedly to the associated and cumulative impacts of these two developments, it seems important for this EA to consider the importance of placing this EA on hold until such time that the MEPA analysis on Section 36 can be properly conducted. Given the significant impacts from both of these projects it seems clear that an IS will be warranted to more adequately assess the potential impacts that have been identified within this EA and others that may be identified. Collectively the development proposed for these two sites represents an area ten times the current downtown Kalispell business district and the potential for significant environmental, economic and social impacts.

Sincerely,



Mayre Flowers  
Executive Director

**Every Voice Is Important!**





**FRDO STAFF REPORT TO FLATHEAD COUNTY  
BOARD OF ADJUSTMENT**



**PACK AND COMPANY / MONTANA DEPARTMENT OF TRANSPORTATION  
FLATHEAD REGIONAL DEVELOPMENT OFFICE  
EXEMPTION FROM THE COUNTY ZONING REGULATIONS  
AUGUST 28, 2000**

A report to the Flathead County Board of Adjustment regarding a public hearing on the relocation of the Montana Department of Transportation's maintenance facility north of Kalispell. A public hearing has been scheduled before the Flathead County Board of Adjustment for September 5, 2000, beginning at 7:00 PM, in Conference Room One, Courthouse East, 723 5th Ave. East, Kalispell.

**BACKGROUND INFORMATION** On behalf of Pack and Company, the Montana Department of Transportation is claiming an exemption from the local zoning regulations as provided for under Section 76-2-402 of the Montana Code.

**Petitioners:** Montana Department of Transportation  
P.O. Box 7308  
Kalispell, MT 59901

Pack and Company  
2355 Hwy 93 North  
Kalispell, MT 59901

Thomas, Dean and Hoskins, Inc.  
690 N. Meridian Rd., Suite 101  
Kalispell, MT 59901

Section 76-2-402 of the Montana Code allows government agencies an exemption from compliance with local zoning regulations subject to a public hearing. This section states "Whenever an agency proposes to use public land contrary to local zoning regulations, a public hearing, as defined below, shall be held. (1) The local board of adjustment, as provided in this chapter shall hold a public hearing within 30 days of the date the agency gives notice to the board of its intent to develop land contrary to local zoning regulations. (2) The board shall have no power to deny the proposed use, but shall act only to allow a public forum for comment on the proposed use."

Pack and Company has been negotiating with the Montana Department of Transportation to relocate their maintenance facility currently located on the east side of Highway 93 and south of West Reserve Drive as part of a development proposal for the Pack and Company property. Pack and Company has a development agreement with the City of Kalispell which includes the maintenance facility site. Prior to the development of the Pack and Company site, the MDOT maintenance facility must be relocated so that the approximately nine acres can be included in the development of the Pack and Company site which contains approximately 50 acres. The total acreage that Pack and Company would have for the site would be approximately 60 acres that has been planned for commercial development.

C. **Location and Size:** The property proposed for the relocated maintenance facility is on the east side of Highway 93 approximately one quarter mile north of West Reserve Drive. The property contains approximately nine acres. See the vicinity map included with this report. This property can be described as Assessor's Tract 2G located in Section 19, Township 29 North, Range 21 West, P.M., M., Flathead County, Montana.

D. **Nature of Request:** A proposal by the Montana Department of Transportation (MDOT) for Pack and Company to use property located in a zoned area of Flathead County for a purpose not specifically allowed under the zoning as provided for under Section 76-2-402 of the Montana Planning and Zoning Statutes. Pack and Company would like to acquire approximately nine acres of land from the Montana Department of Transportation for inclusion in a development site. Pack and Company would be required by MDOT to provide them with facilities which are equivalent to those at their existing site. The new facilities would basically be turn-key prior to the exchange. The personnel and equipment would then be moved to the site and would be used as the new MDOT field maintenance facilities for the area. The MDOT currently operates their field maintenance site for the north Kalispell area on the east side of Highway 93 and south of West Reserve Drive. As previously mentioned, Pack and company is interested in acquiring the property as part of their land assembly for commercial development of the Pack site. In order for Pack to acquire the site through the land exchange process, they are obligated to provide MDOT with an alternate site where they can operate their field maintenance activities.

E. **Existing Land Use and Zoning:** This property has been used in the past for agricultural purposes and is otherwise undeveloped. The property where the new site would be located is in the Highway 93 North Zoning District and is zoned SAG-10, a Suburban Agricultural zoning district which has a ten acre minimum lot size requirement for newly created lots and is rural / agricultural in nature.

E. **Surrounding Zoning and Land Uses Zoning:** This area can be generally described as lying on the outskirts of the urban area of Kalispell and in an area that is a generally rural residential character. There are exceptions to that however with regard to uses in the area and zoning. The Sonju business lies immediately to the west on a relatively small parcel and the Northern Pines Golf Course to the north of that which has residential lots and the golf course. The Armory lies to the east. The properties surrounding these are agricultural in nature and there are a number of residences in Ponderosa Estates subdivision to the northwest. Most of the parcels in the area are relatively large from about ten to 40 acres in size. Zoning on this site and to the north, east and west is SAG-10, zoning to the south is B-6 and RA-1 which is part of the Stillwater Estates development. This development plan was adopted as an amendment to the Kalispell City-County Master Plan in approximately 1991, but never developed.

F. **Master Plan Designation:** This property is in the Kalispell planning jurisdiction and is designated on the Kalispell City-County Master Plan Map as Agricultural. This site is has some productive farmland, however, the proposed new use of this site for the proposed use will have little impact on agricultural activities in the area.

**G. Utilities/Services:**

Sewer service:	Existing individual on-site.
Water service:	Existing individual on-site.
Solid Waste:	Owner Haul
Electric:	Flathead Electric Cooperative
Phone:	CenturyTel
Police:	Flathead County Sheriff's Office
Fire:	West Valley Fire District

**H. Outline of the Proposal.** A "same facilities" site is proposed to be established by Pack and Company for the Montana Dept. of Transportation in order to facilitate a land exchange for property MDOT owns to the south. The new facilities are proposed to be located on an approximately 8.9 acre parcel north of West Reserve approximately one quarter of a mile on the east side of Highway 93. The approximately nine acre parcel would be developed to include the same facilities as currently exist on the site to the south. The parcel proposed for the maintenance facility lies directly in front of the Armory building.

The access to the site would be from an established approach, Armory Road, onto a 24 foot wide paved driveway that serves the National Guard Armory. This access would also be used for access to the new MDOT facility. From Armory Road there will be a driveway into a parking lot that will serve the six mobile office units proposed to be placed near the north end of the property. Two more would be added later. The parking lot would be located between the offices and the north property boundary and would be paved with 25 parking spaces. An equipment storage area would be located south of the office buildings, with sand and gravel being stockpiled near the west side of the site. A loading ramp for heavy equipment is also indicated in this area near the southwest corner of the site. A wide turning radius will be established around the stockpiled material and equipment to accommodate movement of large trucks and equipment. No vehicle fueling or servicing will be done at this site. Other equipment and materials will be stockpiled and stored on site near the south end of the site which would include lamp posts, barriers and other materials until reused or disposed of. Old tires picked off the road are also stockpiled and then disposed of on a yearly basis. Other equipment and materials will be stored near the east end of the site. Landscaping is proposed to consist of an approximately 2.5 to 3.5 foot high by 30 foot wide landscape berm along the west boundary that fronts along Highway 93. This berm would be planted with trees and shrubs of native varieties. A 20 foot wide grassy strip will be seeded along the north, south and east boundaries. Fencing is proposed around the perimeter of the site. Vehicle noise, fumes and dust will be generated as would be anticipated with the equipment use.

**I. Reaction of Nearby Property Owners:** A notice of public hearing was mailed to property owners within 150 feet of the subject property approximately 15 days prior to the hearing. At the writing of the staff report, no comments have been received by the staff regarding this proposal.

**J. Immediate Neighborhood Impact:** The general character of this neighborhood can generally be described as rural residential in nature with low density residential development and ranchette size lots generally ranging in size from ten to 40 acres in size. This facility could have some limited negative impacts to the surrounding properties because of heavy truck traffic, engine noise, dust, smoke and odors

generated from equipment. However, the location of this facility near the National Guard Armory and across from small business, appears to be well suited to the needs of the maintenance facility with a limited impacts on the immediate property owners..

**K. Summary and Discussion:** Pack and Company needs the existing MDOT site south of West Reserve and Highway 93 in order to move forward with plans for the commercial development of their property immediately adjoining it. The proposed new site and location of the facilities is generally well located because of the immediate surrounding land uses, direct access to the highway and proximity. Impacts related to traffic, dust and the visual impacts associated with the facilities' operation will be similar to those generated at the existing site to the south. Relocating the facilities north of the Highway 93 / West Reserve Drive intersection will probably improve traffic circulation at that corner. Buffering and landscaping as proposed can help to mitigate the visual impacts of the facility as well as dust, noise and odors. Staff would suggest that the fencing proposed for the facility along the west side of the property boundary be placed within the yard so that the landscaping is exposed along the highway unobstructed. Additionally, some type of irrigation and maintenance system should be installed at the time of planting to preserve the landscaping.

**L. Recommendation:** The staff can only suggest that the Board of Adjustment write a letter to the MDOT stating that a public hearing has been held and incorporating the comments for their consideration when designing and operating the facility.

REPORTS \00\FZV00-4

NW

Thomas, Dean & Hoskins, Inc.



August 7, 2000

APPLICATION NUMBER:

Narda Wilson, Senior Planner  
FRDO  
723 Fifth Avenue East, Room 414  
Kalispell, Montana 59901

AUG - 8 2000

Re: MDOT Maintenance Facility Relocation

Fwd. to:

Dear Narda:

Enclosed for your review is the site plan for the proposed MDOT Maintenance Facility for the Armory Road site along Highway 93 North. The proposal is to trade the existing facility to Pack and Company in exchange for a replacement facility located along Highway 93 near the Armory. The new facility would be equivalent to the existing, in size and function.

You have a copy of the Environmental Assessment, which addresses in detail the eleven topics requested in the Conditional Use Permit Application. At this time we will not provide additional comments, but reserve the opportunity to do so either at the meeting or in the staff report. After the public hearing, required by 76-2-410, we will modify the plan as much as possible to address public concerns.

Generally, the new facility will be occupied by six office trailers; sand and gravel storage; paint, deicer and asphalt storage; mobile sander unit storage; and ice storage. All tanks and storage will be in conformance with requirements to protect groundwater and other natural resources. The proposed site will be buffered from Highway 93 by a mound, 2.5 to 3.5 feet tall, planted with a variety of trees and shrubs. Area around the mobile offices will be seeded with grass. Vehicle and storage areas will have surface gravel, similar to the existing site. The stockpile areas and office area will have security and/or area lighting also similar to the existing site. This lighting will be low intensity, and directed downward to reduce potential impacts on the surrounding residents; the nearest located about  $\frac{1}{4}$  mile to southwest.

Please contact us if you have questions or need additional information.

Sincerely,

THOMAS, DEAN & HOSKINS, INC.

A handwritten signature in black ink that reads "Michael W. Fraser".

Michael W. Fraser, P.E.

MWF:sa  
K00-060  
D:\docs\aj\Lynch\K00-060\aug7.00.wilson.ltr



Montana Department  
of Transportation  
P. O. Box 7308  
Kalispell, Montana 59904-0308  
(406) 751-2000

Marc Racicot, Governor

August 9, 2000

Narda Wilson, Senior Planner  
F.R.D.O.  
723 Fifth Avenue East  
Kalispell, MT 59901

Post-it® Fax Note		7871	Date	8/9/00	of pages	1
To	Narda Wilson		From	Michael Fraser		
Co./Dept.	F.R.D.O.		Co.	TD+H		
Phone #	758-5980		Phone #	(406) 752-5246		
Fax #	758-5781		Fax #	(406) 752-5230		

Re: MDOT Maintenance Facility Relocation

Dear Ms. Wilson

It is the Department's intent to relocate the current maintenance and office facilities near the Nupac pit to the proposed Armory site.

We are providing this notice of intent as required by 76-2-401 MCA.

The technical presentation is being prepared by Thomas, Dean & Hoskins.

Sincerely,

Larry F. Brazda

Thomas, Dean &amp; Hoskins, Inc.



August 17, 2000

Narda Wilson  
F.R.D.O.  
723-5<sup>th</sup> Avenue East  
Kalispell, MT 59901

Re: MDT - Maintenance Relocation

Dear Narda,

Enclosed is the supplementary information for the application to relocate the MDOT maintenance facility. Please attach this to the application.

If you have any questions, please feel free to contact me.

Sincerely,

THOMAS, DEAN & HOSKINS, INC.

A handwritten signature in black ink that reads "Michael W. Fraser".

Michael W. Fraser, P.E.

MWF:th  
K00-060  
Encl: Supplemental Information for MDOT Relocation  
CC: Jim Lynch  
D:\active\jobs\lynch\MDOTrelocationfacility\august17.00.wilson.ltr.doc

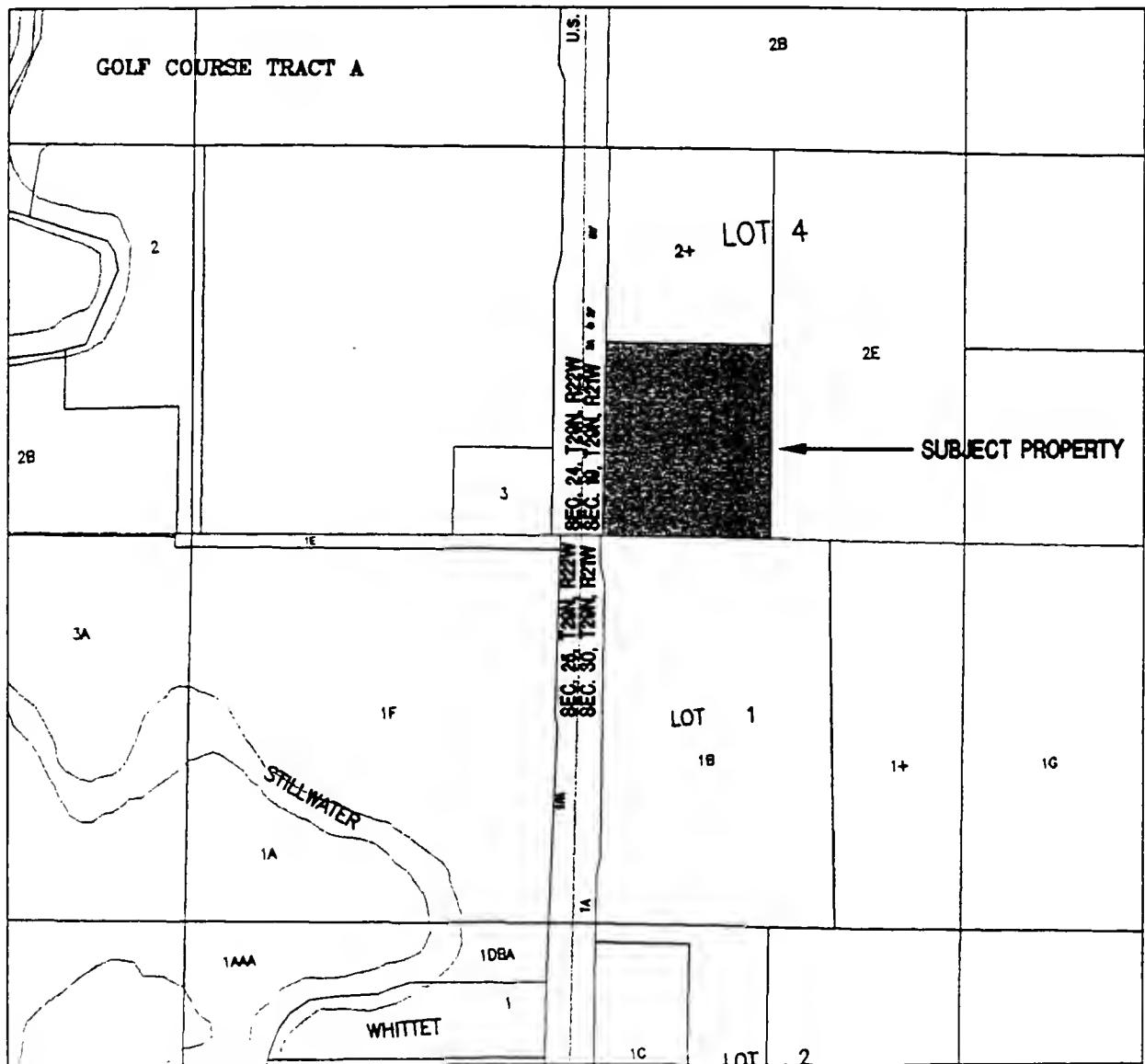
# Adjacent Ownership Map

## Section 19

## T29N, R22W

0 600' 1200' 1800'

S C A L E



# FLATHEAD COUNTY APPLICATION FOR A CONDITIONAL USE PERMIT

This Application shall be submitted, along with all required information contained herein and the appropriate fee to:  
Flathead Regional Development Office  
723 5th Avenue East, Room 414  
Kalispell, MT 59901 - (406) 758-5780

PROPOSED USE: Montana Department of Transportation

OWNER(S) OF RECORD:

Name: Pack and Company Phone: (406) 752-4215  
Mailing Address: 2355 Highway 93 North  
Kalispell, Montana 59901

PERSON(S) AUTHORIZED TO REPRESENT THE OWNER(S) AND TO WHOM ALL CORRESPONDENCE IS TO BE SENT:

Name: Michael W. Fraser, Thomas, Dean & Hoskins, Inc. Phone: (406) 752-5246  
Mailing Address: 690 North Meridian, Suite 101  
Kalispell, Montana 59901

LEGAL DESCRIPTION OF PROPERTY (Refer to Property Records):

Street Address: Tract 2, C.O.S. 8673 Sec. No. 19 Township 29 Range 21  
SW ¼, SW ¼, SW ¼

Subdivision Name: \_\_\_\_\_ Tract No(s). \_\_\_\_\_ Lot No(s). \_\_\_\_\_ Block No. \_\_\_\_\_

1. Zoning District and Zoning Classification in which use is proposed:

AG-10

2. Attach a plan of the affected lot which identified the following items:

- a. Surrounding land uses.
- b. Dimension and shape of lot.
- c. Topographic features of lot.
- d. Size(s) and location(s) of existing building(s)  None
- e. Size(s) and location(s) of proposed building(s)
- f. Existing use(s) of structures and open areas.  Agriculture
- g. Proposed use(s) of structures and open areas.

3. On a separate sheet of paper, discuss the following topics relative to the proposed use:

- a. Traffic flow and control.  See Environmental Assessment
- b. Access to and circulation within the property.
- c. Off-street parking and loading.
- d. Refuse and service areas.
- e. Utilities.
- f. Screening and buffering.
- g. Signs, yards and other open spaces.
- h. Height, bulk and location of structures.
- i. Location of proposed open space uses.
- j. Hours and manner of operation.
- k. Noise, light, dust, odors, fumes and vibration.

4. Attach supplemental information for proposed uses that have additional requirements (consult Planner).

I hereby certify under penalty of perjury and the laws of the State of Montana that the information submitted herein,

on all other submitted forms, documents, plans or any other information submitted as part of this application, to be true, complete, and accurate to the best of my knowledge. Should any information or representation submitted in connection with the application be incorrect or untrue, I understand that any approval based thereon may be rescinded, or other appropriate action taken. The signing of this application signifies approval for F.R.D.O. staff to be present on the property for routine monitoring and inspection during the approval and development process.

Signed: John  
(applicant)

Date: 3/7/00

## INSTRUCTIONS FOR CONDITIONAL USE PERMIT APPLICATION

1. Answer all questions. Answers should be clean and contain all the necessary information.
2. In answering question 1, refer to the classification system in the Zoning Regulations.
3. In answering questions 2 and 3, be specific and complete. If additional space is needed, please use a separate sheet of paper to discuss the appropriate topic.
4. A plot plan or site plan must be submitted with each application, with all existing or proposed structures shown, and distance from each other and from the property lines.
5. A list of property owners (within 150 feet, but excluding any surrounding right-of-way) and their mailing address must be submitted with each application.

### Example:

Trace #

**Owner of Record**

**Mailing Address**

6. A fee, as determined by the F.R.D.O. fee schedule, for a Conditional Use Permit must be submitted with the application to cover the cost of necessary investigation, publication, mailing and processing procedures. Make check payable to Flathead Regional Development Office.

**FOR OFFICIAL USE ONLY**

Application No.: \_\_\_\_\_ Application Received: \_\_\_\_\_  
Fee Paid: \_\_\_\_\_ Date: \_\_\_\_\_ Receipt No.: \_\_\_\_\_

Flathead County Board of Adjustment Public Hearing Date: \_\_\_\_\_

Application Approved? \_\_\_\_\_ Approved with Modifications? \_\_\_\_\_ Denied? \_\_\_\_\_

If Approved, Conditions Attached:

ZONING ADMINISTRATOR, FLATHEAD COUNTY

Date: \_\_\_\_\_

Supplemental Information For MDOT Relocation

a. Traffic Flow and Control. Relocation of the facility to the site near the Armory will remove the ingress and egress of maintenance and survey vehicles from a section of Highway 93, south of the West Reserve intersection. This section of Highway 93 carries north and south volume as well as local Reserve Drive traffic. At the new site, the same MDOT trips will be added to Highway 93 in an area which carries only north and southbound traffic. Relocation will reduce traffic in a higher volume area of Highway 93.

Highway 93 has five lane configuration, with wide shoulders, in both areas. The shoulders and center median lane on Highway 93 will be used for deceleration and acceleration when turning. This will allow safer flow onto and off of the highway.

Relocation will not have increase use or traffic to the facility.

Overall, there will be no impact on Highway 93 due to relocation.

b. Access to and Circulation within the Property. The attached site plan shows the new facility sharing an existing approach used by the Armory. The street has been constructed for heavy traffic hauling armored military vehicles. MDOT traffic will not have greater loads than military traffic. The street width is 24 feet; wide enough for two lanes. MDOT's approaches to the street will be back from the stop bar on Highway 93. There will be adequate storage for traffic onto Highway 93 without impacting access to the maintenance yard.

The site is 8.9 acres. A preliminary site plan, containing the same improvements as the existing site, shows ample area for all turning movements for the department's trucks.

c. Off-street Parking and Loading. The site plan shows the six existing office trailers and parking. The existing site has a parking lot equivalent to the existing twenty-five parking spaces.

A loading ramp is shown for movement of heavy equipment. Areas around the stock piles are wide, and turning areas are large enough to accommodate belly dump delivery trucks.

d. Refuse and Service Areas. No vehicles will be fueled or serviced at the site. These functions are centrally located on Fifth Avenue WN in Kalispell. Refuse from the offices will either be contracted for hauling, or delivered to the main office.

Old light standards, signal poles and arms, barriers, and other similar items will be temporarily stored on site, until reused, disposed of to other Districts, or the landfill. Tires found alongside the road are picked up, stored at the site, and disposed of yearly to a State approved Class 3 landfill.

e. Utilities. Water will be provided by a well, pressure tanks, small mains, and services. It will be designed and constructed in accordance with DEQ standards. Sewer will be provided by multi-user septic systems approved by the DEQ and Flathead County.

CenturyTel will provide communications. Flathead Electric Cooperative is the power supplier. All utility suppliers have plant equipment along Highway 93.

- f. Screening and Buffering. A 30 foot setback from the highway along the entire highway frontage will have a 2.5 to 3.5 feet tall berm, seeded with a native grass mix, and planted with trees and shrubs - as shown on the site plan. Plantings will be varieties resistant to drought. An existing hill on the south will screen the site from northbound Highway 93 traffic. A 20 foot wide grassy area will be seeded along the north, south and east boundaries. Around the mobile offices there will be a lawn, similar to the existing facility.
- g. Signs, Yards and other Open Spaces. Overall lot coverage is approximately 4%. No signs have been proposed.
- b. Height, Bulk, and Location of Structures. The only structures proposed are the six mobile offices and two small buildings for loader and salt storage. These will have maximum heights of less than sixteen feet. Each office will have a small, detached equipment storage building. The site plan clearly shows the location of all structures.
- i. Location of Proposed Open Space Uses. Please refer to the site plan for specific locations and uses. The quantity of stockpiled sand and gravel varies during the year. In this location, the stockpiles will appear as gray hills.

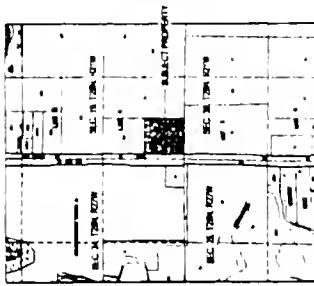
Since the usable area and design of this site is more efficient than the existing site, the stockpiles will not be as high, further reducing visual impact.

- j. Noise, Light, Dust, Odors, Fumes, and Vibration. Vehicle use will be the only cause of noise and vibration. The intensity of this will be no greater than currently experienced from Highway 93. Five yard lights are proposed for security and illumination when night loading sanding materials in the winter. As proposed, these lights will be focused downward to illuminate the nearby work areas; not unrelated sites. Overall, the lights will not be as intense as the Armory's. The access road is paved, and the parking area for the offices will be paved, eliminating dust. Area in the maintenance facility will be gravel, and eventually paved with excess asphalt material as it becomes available. Vehicle speeds are very low. While small amounts of dust may occur in the short-term, it will be eliminated as the driving surfaces are paved. There will be processing of gravel with loaders and graders; noise and vibration will be no greater than currently experienced from Highway 93. The only fumes will be from the vehicles -- gas and diesel.

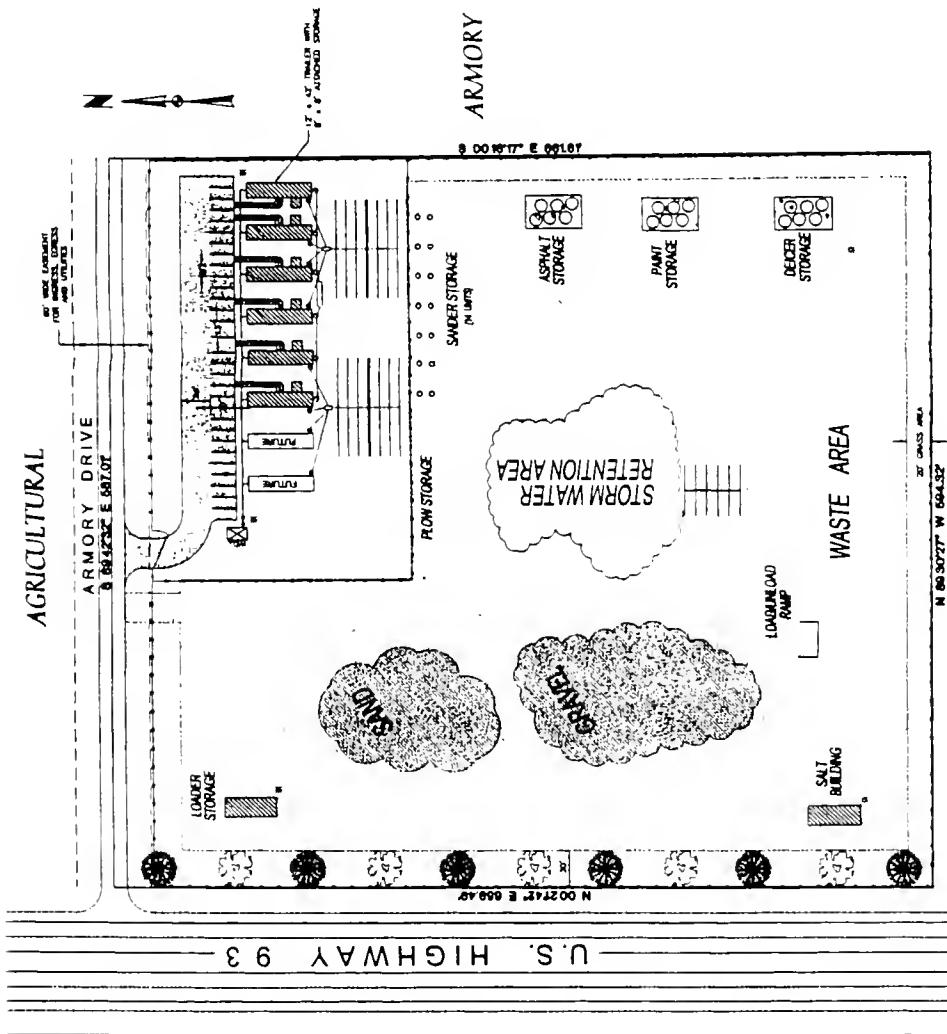
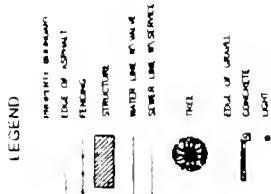
MWF:th

K00-060

D:Lynch/MDOT Maintenance Facility Relocation/supplemental information.doc



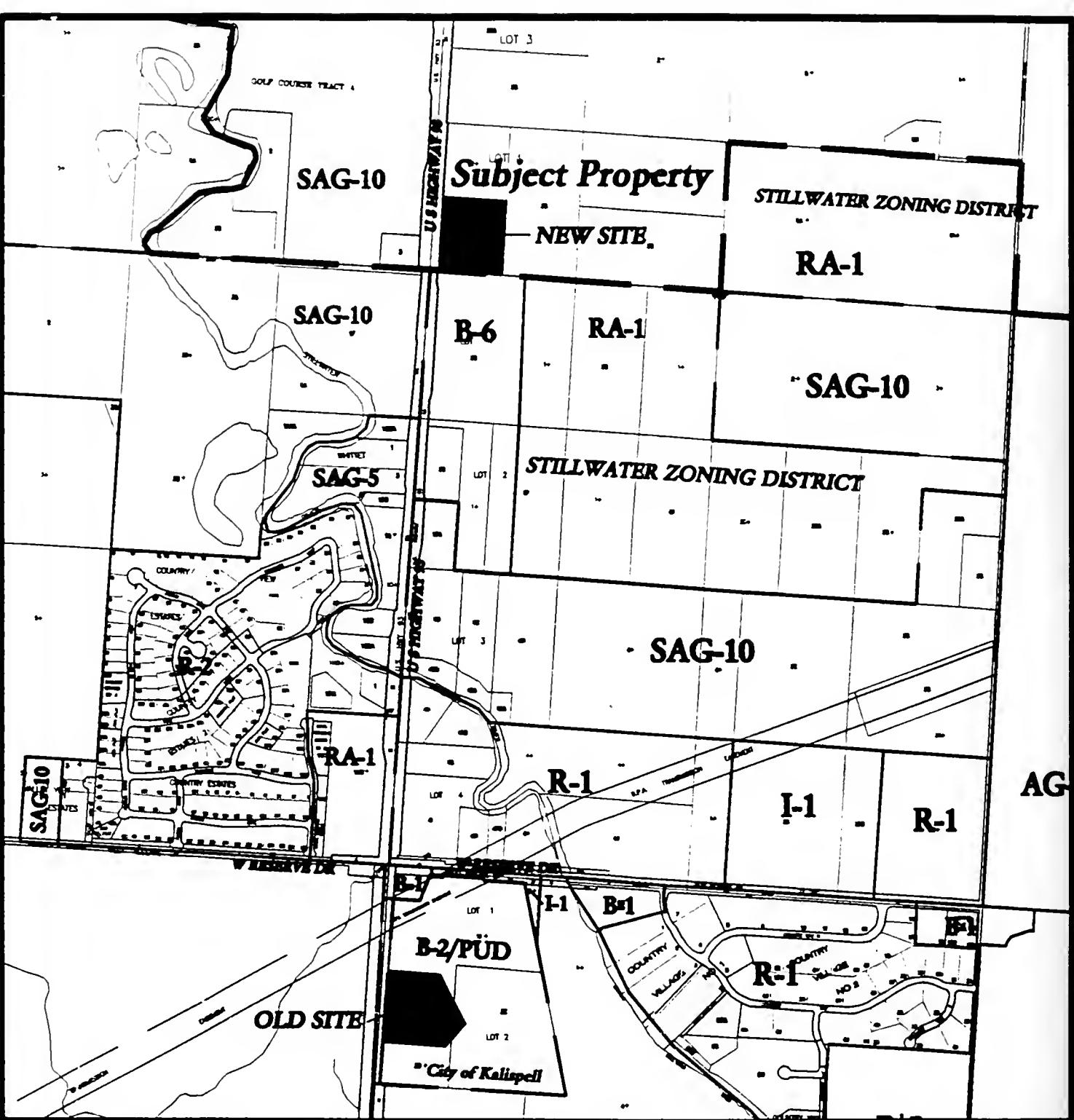
VICINITY MAP  
NO SCALE



RECREATIONAL

LIGHT  
INDUSTRIAL

0' 50' 100' 150'  
S C A L E



## VICINITY MAP

MONTANA DEPARTMENT OF TRANSPORTATION

EXEMPTION FROM ZONING TO RELOCATE

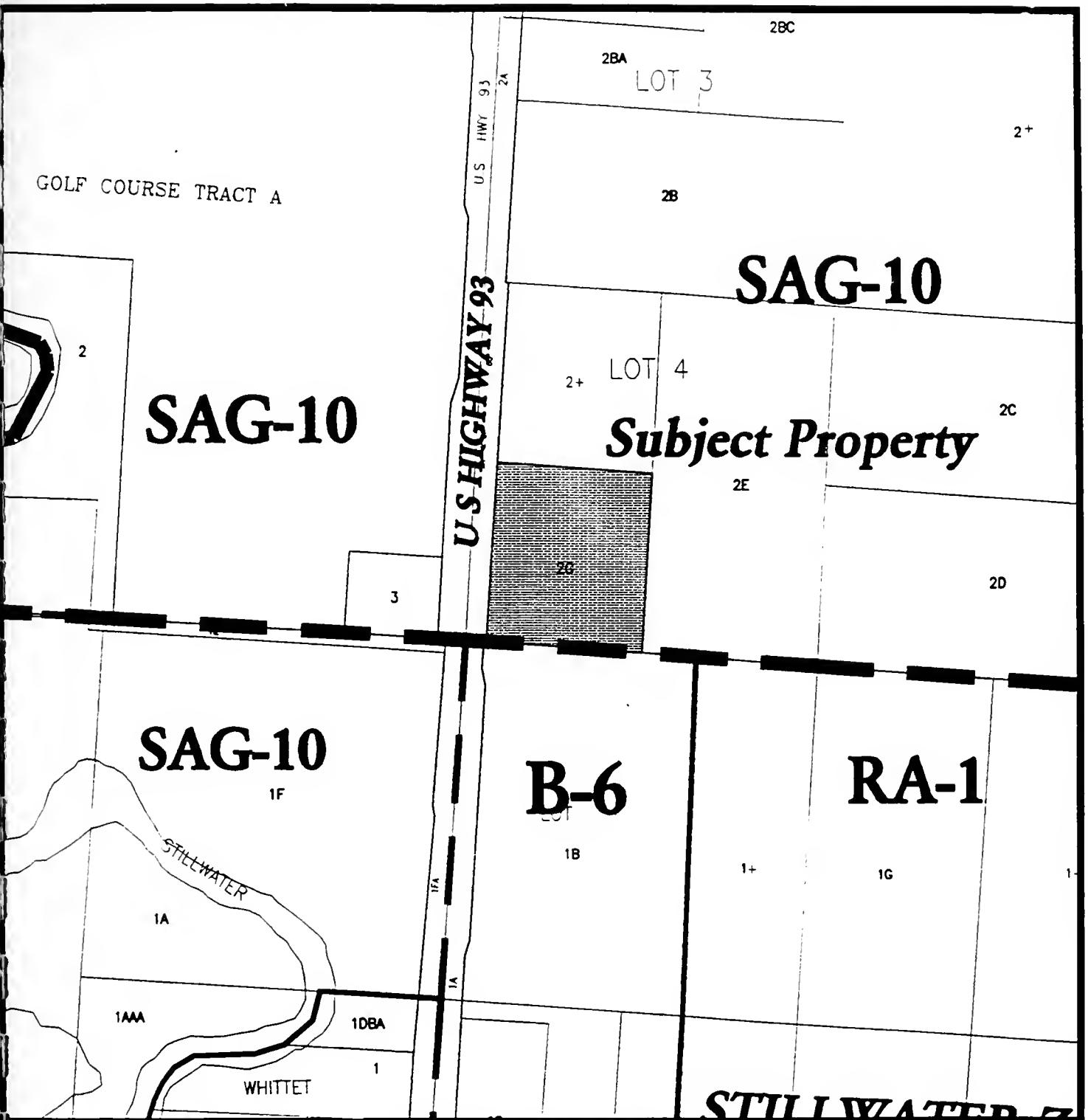
THE EXISTING MDOT MAINTENANCE FACILITY

SUBURBAN AGRICULTURAL – 10 ACRE MIN. LOT SIZE  
HIGHWAY 93 NORTH ZONING DISTRICT

FILE #FCU-00-14

SCALE 1" = 1200'

PLOT DATE: 8/10/00  
H:\vis\site\FCU00\_14.dwg



MONTANA DEPARTMENT OF TRANSPORTATION

EXEMPTION FROM ZONING TO RELOCATE

THE EXISTING MDOT MAINTENANCE FACILITY

SUBURBAN AGRICULTURAL - 10 ACRE MIN. LOT SIZE  
HIGHWAY 93 NORTH ZONING DISTRICT

FILE #FCU-00-14

SCALE 1" = 500'

PLOT DATE: 8/10/00

H:\gds\site\PCU00\_14.dwg



**BOARD OF ADJUSTMENT PUBLIC HEARING ON  
RELOCATION OF MDT MAINTENANCE/FIELD  
ENGINEERING FACILITY**



**NOTICE OF PUBLIC HEARING  
FLATHEAD COUNTY BOARD OF ADJUSTMENT**

**School District #5 Storage Units at Edgerton School Conditional Use Permit  
Linse Setback Variance in R-4 District Bigfork Area  
MDOT / Pack and Co. Relocation of Maintenance Facility to SAG-10 Property**

The Flathead County Board of Adjustment will hold a public hearing on the items listed below on **Tuesday, September 5, 2000** beginning at **7:00 PM** in Conference Room One, Courthouse East, 723 Fifth Avenue East, Kalispell, Montana.

In addition, the **Bigfork Land Use Advisory Committee** will hold a **public meeting** to review Item 2 described below on **Wednesday, August 30, 2000** at **4:00 PM** in the Horizon Christian Fellowship Building located at 8541 Highway 35, Bigfork.

1. A request by School District #5 for a conditional use permit to allow the placement of four storage containers on the north side of Edgerton School. The containers would be eight feet wide, twenty feet long and eight and one half feet high. They would be placed within the existing parking lots and screened with a ten-foot tall chain link fence with wooden slats. The property where Edgerton School and the storage containers would be located is in the Evergreen and Vicinity Zoning District and is zoned RA-1, Low Density Residential Apartment, which lists schools as a conditionally permitted use. The property address for Edgerton School is 1400 Whitefish Stage Road. The property can further be described as Assessor's Tracts 1A in Section 31 and 5E in Section 32, Township 29 North, Range 21 West, P.M.M., Flathead County, Montana.
2. A variance request submitted by Paul and Virginia Linse to the minimum 20 foot front yard setback requirement of the R-4, Two Family Residential, zoning district on property in the Bigfork Zoning District. Specifically, Mr. and Mrs. Linse have requested to construct an elevated deck on the second floor of their existing residence that will extend seven (7) feet into the required front yard setback and will have a setback of 13 feet rather than the required 20 feet. The subject property is located at 223 Beach Road on Lot 5, Bigfork Shores, a platted subdivision of Section 36, Township 27 North, Range 20 West, P.M.M., Flathead County, Montana.
3. A proposal by the Montana Department of Transportation (MDOT) for a land exchange between MDOT and Pack and Co. for the purpose of relocating their existing maintenance facility currently located on the southeast corner of West Reserve Drive and Highway 93. MDOT would exchange this approximately nine acre parcel for a similarly sized parcel north of West Reserve Drive on the east side of Highway 93, west of the National Guard Armory. The facilities at the new location would be commensurate with the existing facilities and would generally consist of six to eight office trailers along with materials and equipment storage. The property proposed for the maintenance facility site can be described as Assessor's Tract 2G located in Section 19, Township 29 North, Range 21 West, P.M.M., Flathead County, Montana.

Interested parties are encouraged to attend the meeting(s) or submit written comments to make their views or concerns known to the Board. Additional information and documents pertaining to the above requests are on file in the Flathead Regional Development Office, 723 Fifth Avenue East, Room 414, Kalispell, MT 59901, and may be reviewed during regular office hours, or you may call (406) 758-5980 for more information.

*Thomas R. Jentz /m*

Thomas R. Jentz  
Flathead County Zoning Administrator

No. 3842  
 NOTICE OF PUBLIC  
 HEARING  
 FLATHEAD COUNTY  
 BOARD OF ADJUST-  
 MENT

School District #5 Storage Units at Edgerton School Conditional Use Permit

Linse Setback Variance In R-4 District Bigfork Area  
 MDOT/Pack and Co.  
 Relocation of Maintenance Facility to SAG-10 Property

The Flathead County Board of Adjustment will hold a public hearing on the items listed below on Tuesday, September 5, 2000 beginning at 7:00 PM in Conference Room One, Courthouse East, 723 Fifth Avenue East, Kalispell, Montana.

In addition, the Bigfork Land Use Advisory Committee will hold a public meeting to review the items described below on Wednesday,

Wednesday, August 30, 2000 at 4:00 PM in the Horizon Christian Fellowship Building located at 8541 Highway 35, Bigfork.

1. A request by School District #5 for a conditional use permit to allow the placement of four storage containers on the north side of Edgerton School. The containers would be eight feet wide, twenty feet long and eight and one half feet high. They would be placed within the existing parking lots and screened with a ten-foot tall chain link fence with wooden slats. The property where Edgerton School and the storage containers would be located is in the Evergreen and Vicinity Zoning District and is zoned RA-1, Low Density Residential Apartment, which lists schools as a conditionally permitted use. The property address for Edgerton School is 1400 Whitefish Stage Road. The property can further be described as Assessor's Tracts 1A in Section 31 and 5E in Section 32, Township 29 North, Range 21 West, P.M.M., Flathead County, Montana.

2. A variance request submitted by Paul and Virginia Linse to the minimum 20 foot front yard setback requirement of the R-4, Two Family Residential, zoning district on property in the Bigfork Zoning District. Specifically, Mr. and Mrs. Linse have requested to construct an elevated deck on the second floor of their existing residence that will extend seven (7) feet into the required front yard setback and will have a setback of 13 feet rather than the required 20 feet. The subject property is located at 223 Beach Road on Lot 5, Bigfork Shores, a platted subdivision of Section 36, Township 27 North, Range 20 West, P.M.M., Flathead County, Montana.

3. A proposal by the Montana Department of Transportation (MDOT) for a land exchange between MDOT and Pack and Co. for the purpose of relocating their existing maintenance facility currently located on the southeast corner of West Reserve Drive and Highway 93. MDOT would exchange this approximately nine acre parcel for a similarly sized parcel north of West Reserve Drive on the east side of Highway 93, west of the National Guard Armory. The facilities at the new location would be commensurate with the existing facilities and would generally consist of six to eight office trailers along with materials and equipment storage. The property proposed for the maintenance facility site can be described as Assessor's Tract 2G located in Section 19, Township 29 North, Range 21 West, P.M.M., Flathead County, Montana.

Interested parties are encouraged to attend the meeting(s) or submit written comments to make their views or concerns known to the Board. Additional information and documents pertaining to the above requests are on file in the Flathead Regional Development Office, 723 Fifth Avenue East, Room 414, Kalispell, MT 59901, and may be reviewed during regular office hours, or you may call (406) 758-5980 for more information.

/s/Thomas R. Jentz /mw  
 Thomas R. Jentz  
 Flathead County Zoning  
 Administrator

August 20, 2000

CERTIFICATION

APPLICANT: MDOT/PACK & COMPANY

FRDO FILE #: FZV-00-4

I, the undersigned certify that I did this date mail a copy of the attached notice to the following list of landowners within 150 feet of the property lines of the property that is the subject of the application.

*Micheal S. Burgess*  
Date: August 16, 2000

<u>Assessor's No.</u>	<u>S-T-R</u>	<u>Lot/Tract No.</u>	<u>Property Owner &amp; Mail Address</u>
---------------------------	--------------	--------------------------	--

SEE ATTACHED LIST

APPLICANT

PACK & COMPANY  
2355 HWY 93 NORTH  
KALISPELL MT 59901

MDOT  
PO BOX 7308  
KALISPELL MT 59904-0308

TECHNICAL PARTICIPANT

MICHAEL FRASER  
T D & H  
690 N MERIDIAN RD STE 101  
KALISPELL MT 59901

ADJACENT OWNERSHIP

<u>TRACT NO.</u>	<u>ASSESSOR NO.</u>	<u>OWNER</u>
------------------	---------------------	--------------

**SECTION 19, T29N, R21W**

2	0720651	Regional Enterprises Inc. PO Box 2492 Kalispell, MT 59903-2492
2E	E004096	State Of Montana Dept. Of Military Affairs PO Box 4789 Helena, MT 59604-4789

**SECTION 30, T29N, R21W**

1	0971717	Stillwater Corporation 155 7 <sup>th</sup> Ave. WN Kalispell, MT 59901-3817
1B	0147140	Claridge, Roger PO Box 7338 Kalispell, MT 59904-0338

**SECTION 24, T29N, R22W**

3	0013750	Sonju, Richard O. & Mary J. 2902 Highway 93 N Kalispell, MT 29901-6845
Tract a – Golf Course Northern Pines Community	0002315	Northern Pines LLC 275 Corporate Ave. Kalispell, MT 59901-3472

**SECTION 25, T29N, R22W**

1E	0002317	Trippet, Nami C. PO Box 32 Kalispell, MT 59903-0032
1F	0047450	Bauer Trust, Ervin & Marie 2284 Whitefish Stage Rd. Kalispell, MT 59901-6758

APPROVED

8/7/00 

FLATHEAD COUNTY PLAT BOOK  
S. M. 1  
Kalispell, MT 59901

## Local News -Highway maintenance yard move gets hearing

By RICK HULL  
The Daily Inter Lake

A proposal for a highway maintenance yard goes before the Flathead County Board of Adjustment Tuesday, though there is little the board can do.

The meeting is at 7 p.m. in Conference Room One of Courthouse East.

The Montana Department of Transportation is relying on an exemption for government agencies to sidestep zoning. The board hearing is a step in moving the U.S. 93 maintenance yard from in front of Nupac near West Reserve Drive. Nupac arranged the move in its effort to clear its gravel pits and highway frontage for commercial development.

The yard will move a mile up U.S. 93 to a site north of Glacier Memorial Gardens Cemetery. The nine acres are in front of the National Guard maintenance building.

The Board of Adjustment holds a public hearing, but it cannot deny the move, even though the maintenance yard is not allowed under current zoning.

In July, the department released an environmental assessment, which looked mostly at the ramifications of opening the Nupac property to development. There were two comments by the Aug. 21 deadline, one from a department traffic engineer on access, and one from the city of Kalispell on the Nupac site.

Citizens for a Better Flathead sent a late letter about the Nupac site and the state lands across the highway. The letter also asked why alternatives for the new site had not been considered.

The Board of Adjustment application includes details about the new yard. Six office trailers will be located along the armory access road. Sand and gravel will be stockpiled near the highway, and storage areas for liquid deicer, asphalt and paint will occupy the back of the property.

A mound about 3 feet high will be built along the highway and planted with trees and shrubs.

The planning office notes that the board can do nothing other than write to the Montana Department of Transportation, incorporating comments from the hearing. The planning office recommends that the fence be located behind the landscaping to better shield the maintenance yard, and an irrigation system be installed to ensure that the trees and shrubs will grow.

**DRAFT**

amongst property owners. He said it was a subdivision platted in the 60's, and most of the lots were built prior to the adoption of the Bigfork zoning. He said a few had developed in the post zoning era, and all of the lots in that section had come before the Board for a variance to the front yard setback. Sanderson clarified that they had not approved lots close to the lake or canal because those were included in the lakeshore protection area. He said the unique situation here was that the owners strove to build to conform to the zoning, and as they looked out at the other houses being built they questioned their equity and would now like to build an elevated deck off the second floor that would extend 7 feet into the required setback. Staff recommended they adopt the findings of fact and approve the variance for an elevated deck to provide a measure of equity for the property owners.

**PUBLIC HEARING**

The public hearing was opened to those who wished to speak on the application.

**PROPONENTS**

No one wished to speak.

**OPPONENTS**

No one wished to speak and the public hearing was closed.

**BOARD DISCUSSION**

Rea and Putzier said this was not a big issue, that there were other homes similar to this. Van Dort asked and Sanderson answered yes, it did go before the Bigfork Land Use Advisory Committee and they adopted the findings of fact in the staff report and recommended the Board of Adjustment issue the variance.

**MOTION**

Van Dort moved and Putzier seconded to adopt staff report #FZV-00-3 as findings of fact and grant the variance request to permit a 13-foot front yard setback for an attached elevated deck on Lot 5 of Bigfork Shores.

Hash stated he voted in favor of the variance because it was not conferring to special privilege and was in harmony with the rest of the neighborhood.

On a roll call vote Putzier, Netteberg, Rea, Hash, and Van Dort all voted Aye.

**MONTANA DEPARTMENT  
OF TRANSPORTATION  
ZONING EXEMPTION**

A proposal by the Montana Department of Transportation (MDOT) for a land exchange between MDOT and Pack and Co. for the purpose of relocating their existing maintenance facility from the southeast corner of West Reserve Drive and Highway 93 to the east side of Highway 93, west of the National Guard Armory in an SAG-10 zoning district.

**STAFF REPORT**

Forrest Sanderson gave a presentation on staff report #FZV-00-4, in which staff stated the request boiled down to a land swap

that would move the facility north. Sanderson referred to a map to point out the proposed location. He said the applicants were represented by Mike Fraser of Thomas, Dean, and Hoskins, who was in the audience. Sanderson explained that MDOT was an agency exempt from zoning and the Board may only advise and recommend. Sanderson stated there was an environmental assessment, as a supplement, prepared by Robert Heschen Associates, Land and Water Consulting. He briefly stated MDOT's proposal, which included relocation to a new facility, a paved approach/parking lot off Armory Drive, and the housing of 25 vehicles. He said they would relocate six office trailers, have a tied in septic and drain field system, stock piles of sand and gravel, storm water retention, asphalt, paint and de-icer storage, plus an area tagged for waste to store arms for signal lights, tires, etc. Sanderson stated the site would be fenced and a vegetative screen was proposed along Hwy. 93. He said the State was reserving the right to install two additional trailer units in the future. The staff recommended sending a notice of the hearing to the State of Montana along with any recommendations the Board arrives at as a result of the public hearing. One thing staff felt was important was that the fence, on the Hwy. 93 side, be moved inside the vegetative screen and that an irrigation system be installed to support the vegetation instead of leaving it to fend for itself. He said that most of the vegetation at their existing site was dead or dying and a minimal investment in irrigation would help. Staff recommended the Board write a letter to the MDOT stating that a public hearing had been held and incorporate the comments for their consideration when designing and operating the facility.

## **PUBLIC HEARING**

The public hearing was opened to those who wished to speak on the proposal.

Mike Fraser, of Thomas, Dean, & Hoskins, spoke in favor of the project. He stated they provided technical representation and prepared the site plan in conjunction with the MDOT. Fraser stated that the staff report did an excellent job in representing the facts. He said the proposed buffering was greater than what was there now, and that the topography lent itself to shielding the site on the south side. Fraser said it was a transitional area and thought it was a congruent use for the area. He said they were there to ask for comments on the plan, what they could do to make it a better site and to answer any questions.

Dick Sonju, of Sonju Industrial, spoke in favor of the project. He said Sanderson answered a lot of his concerns as far as the vegetation and fencing. He said he hoped it would be better than what they did further up the road. He thought Northern Pines would be addressing the ditch on their side of the

highway and said he would also. He said he found it appalling that they wouldn't build a permanent facility for the employees and the State Hwy. Department. He said Sanderson addressed the vegetation issue, and he was in agreement, but wanted to express his opinion that if they were going to be a good steward of our money, why wouldn't they invest in a permanent structure versus something that would need ongoing maintenance. Since they are exempt from zoning, he felt nothing else could be said as a neighboring landowner.

## OPPONENTS

Mary Flowers, Citizens for a Better Flathead, had a few questions before stating her formal comments. She wanted to know if there was a containment facility planned to store hazardous waste. Sanderson said he could not answer that, but he believed MEPA required they address storage and containment for hazardous materials. She asked if the pond would be a lined pond and Sanderson said he did not know. Fraser said infiltration pond. Flowers asked about the screening, wondering why it was not proposed for the north or the south. Sanderson pointed out that the way it sat, coming north, you couldn't see into the sight and as for the south, he said, there wasn't any screening proposed and yes, you could see it coming north and south. Flowers wanted clarification that the trailers were for offices and not overnight housing.

Flowers stated her comments were on behalf of the Citizens for a Better Flathead who were concerned that all ranges were considered. One of their concerns was location. She said Hwy. 93 was a very important corridor for the community and they thought the project failed to address other, more appropriate sites for a plant like this. She said the proposal failed to discuss the long term future of the plant and its intended use as far as having the same hours or expanded hours. She said it was difficult to comment on the appropriateness of the site given the lack of information provided. She said they were concerned, due to the history of the past location, that adequate precautions be taken for the storage of any materials with a hazardous nature. She added that the storm water be adequately addressed, whether or not a lined pond was more appropriate for this type of site. She said she supported the recommendation of the planning office that water be provided for vegetation and that a fence be behind the vegetation. Her final comment was that they felt while a project of this nature was exempt under current State law, it did not exempt the State from responding as to why this was a good investment, and why this was the most proper location. She asked why they failed to get other appraisals on the issue so the public could provide adequate comment.

No one else wished to speak and the public hearing was closed.

## BOARD DISCUSSION

Rea asked and Fraser answered that, no, they would not have a repair and maintenance facility on the property, it would remain downtown. He said the site was strictly a stock pile and when the construction activity decreased the facility would move elsewhere.

Van Dort asked if any other sites were looked at and Fraser answered that it was part of a land swap and was an appropriate site location. Van Dort commented that that was why others weren't reviewed.

Rea asked about the approach off the highway and expressed concern about traffic in the winter. Fraser said there was adequate visibility and thought it was a suitable approach.

Hash asked if Fraser was there on behalf of Pack and Company. Fraser said he was there on behalf of Pack and Company, providing technical representation for the MDOT. Hash clarified that the Department did not have representation present and Fraser said that was correct. Hash pointed out that the staff report mentioned some negative impacts, such as smoke and dust, and said it was having those impacts now, they were just moving it to another area. Hash asked if the impacts would be more significant or if more people would be affected by those impacts with the move. Sanderson suggested the only person directly impacted would be Mr. Sonju, who was sitting behind him and said they had already heard his opinion. He thought the existing site, located south of West Reserve, probably impacted more individuals.

Hash asked if Sonju was in favor of the project and he said, yes, that his concerns were about the vegetation in front having irrigation and that the ditches were maintained. He also wondered why, if they used the trailers on a temporary basis, wouldn't they build a permanent facility for their employees. Jim Lynch with NUPAC explained, saying the trailers were there because they had increased construction in that area and this provided a location for the offices. He said, as the construction needs dwindle on Hwy. 93 and increase somewhere else in the state, the trailers would be picked up and moved. Hash concluded with Lynch that they were temporary offices for as long as they were needed in that position, but they were moved all the time and rotated in and out. Lynch said the trailers came in during the Hwy. 93 construction project.

Putzier referred to the plot plan showing future sites and wondered if they were going to add more trailers. Lynch explained that they were to move and give MDOT what they had. He said one thing that was asked was that we leave enough room for two more trailers. He said they may never

show up, but they wanted enough room to accommodate two more trailers. Putzier said they would bring in or take out trailers as work increased or decreased. Hash said they were not limited to just those future sites and said they could put as many trailers on there as they wanted.

Rea wondered if the building being used for asphalt, paint and de-icing would be a permanent structure. Fraser answered yes, they were tanks with a concrete containment around or underneath them. He said the only structures being built were a small building on each trailer for storage and a little pump house.

Sanderson made a comment to Flowers stating he presumed the state would formally file a MEPA document and it would be taken through a public review and comment process. Fraser stated that the document had already been prepared and advertised. He further stated that the MDOT was not exempt from environmental departments, or the regulation departments and would be built in compliance.

Hash concluded they would not be voting on this but submitting a letter that states they held the public hearing and these were the comments made. Rea stated that was correct adding that he would like an added recommendation for some type of permanent irrigation so that what happened before with their vegetation didn't happen again. He said if they were going to drill a well that it wouldn't be that difficult to add irrigation out front. He thought it would be a terrible waste of taxpayer money to buy and put in vegetation that would just die.

Hash wondered why the planning office didn't propose screening to the north and Fraser said they actually did have it. Sanderson stated they had to be careful with the vegetation along the northern boundary not to obscure sight distances along Armory Road. Fraser stated that the area around the trailers, or mobile offices, would be sawdust. He said it would have a business, office complex character. He said it would be within the screened area. Rea asked specifically if they were planning irrigation. Fraser said it was green right now. Lynch said he was sure they would, but he couldn't speak for the highway department. Putzier said he assumed they wouldn't see any noxious weeds along there.

Sanderson stated that the staff suggested inclusions were; move the fence behind the vegetation buffer along the Hwy. 93 side, and add an irrigation system.

Hash stated they were not changing the staff recommendations, they were just hearing comments. Sanderson stated the comments he heard, above and beyond what staff presented

were; a request for a permanent office building, questions about the locations and whether it was a good investment for the state, questions about the storage of hazardous waste, questions about the long term future of the site, and the comment about the track record of MDOT inspecting maintenance at their current site. He added that Putzier asked a very good question about control of noxious weeds.

Roland Andrews, who was involved in a group who owns the property to north said he came to listen. He said they were not against the exchange, but wanted to point out that there was irrigation that came from the golf course. He thought it was just a matter of letting the State know that there was already an existing irrigation line.

**MOTION**

Van Dort moved and Putzier seconded to adopt staff report #FZV-00-4 as findings of fact and, based on those findings would write a letter to the MDOT stating a public hearing was held, outlining the issues presented.

On a roll call vote the motion passed unanimously.

**OLD BUSINESS**

No old business was presented.

**NEW BUSINESS**

Sanderson stated they had a variance request coming up in Bigfork, a conditional use in the I1H for a car lot.

**ADJOURNMENT**

The next regular meeting will be held on Tuesday, October 3, 2000 at 7:00 p.m. The meeting was adjourned at approximately 8:15 p.m. on a motion by Netteberg and seconded by Van Dort.

---

Dennis Rea, President

---

Debbie Willis, Recording Secretary

APPROVED AS SUBMITTED/CORRECTED: \_\_\_\_/\_\_\_\_/2000.

FLATHEAD COUNTY  
BOARD OF ADJUSTMENT

RECEIVED  
1  
SEP 25 2000  
ROBERT L. MCCORMICK

FLATHEAD COUNTY ZONING ADMINISTRATOR  
FLATHEAD REGIONAL DEVELOPMENT OFFICE  
723 FIFTH AVENUE EAST, ROOM 414  
KALISPELL, MT 59901  
TELEPHONE: (406) 758-5980  
FAX: (406) 758-5781

September 22, 2000

Montana Department of Transportation  
P.O. Box 7308  
Kalispell, MT 59904

Pack and Company  
2355 Hwy 93 North  
Kalispell, MT 59901

Re: Relocation of the MDOT Maintenance Facility, Kalispell

Dear Sir / Madame:

As you are aware, the Flathead County Board of Adjustment met at their regular meeting of September 5, 2000 and held a public hearing on the proposal for a land exchange between MDOT and Pack and Company as required under Section 76-2-401, M.C.A, whenever a public agency proposes to use property contrary to local zoning.

Forrest Sanderson, of the Flathead Regional Development Office, explained the proposal to the board. Staff recommended that the board write a letter to MDOT stating that a public hearing had been held and incorporating the comments for their consideration when designing and operating the facility.

After holding the public hearing and board discussion of the proposal, a motion passed unanimously that a letter be sent to the MDOT encouraging them to consider the following comments:

1. Move the proposed fence behind the vegetation buffer along the side of the property facing Highway 93.
2. That an irrigation system be installed to assist in the maintenance of the vegetation.
3. Consider construction of permanent office buildings rather than using the proposed office trailers.
4. Insure that the storage of any hazardous waste is in accordance with all environmental standards and regulations.
5. Control the noxious weeds and maintain the roadside ditch.

Thank you for the opportunity to comment on this project and your cooperation in creating an appealing entrance to the Kalispell area. If you have any questions regarding this matter please contact Narda Wilson, Senior Planner, at (406) 758-5980.

Sincerely,



Thomas R. Jentz  
Flathead County Zoning Administrator

C: TD & H, 690 N. Meridian Rd., St 101, Kalispell, MT 59901

Cw/att: D. Norderud, Peccia & Assoc., Box 5653, Helena, MT 59604  
(staff report FZV-00-4, draft BOA minutes)

c: Flathead County Clerk & Recorders Office

TRJ/NW/dw

H:\FRDO\CUP-PMT\FC\2000\FZV-00-4.DOC

## MEPA ENVIRONMENTAL ASSESSMENT

---

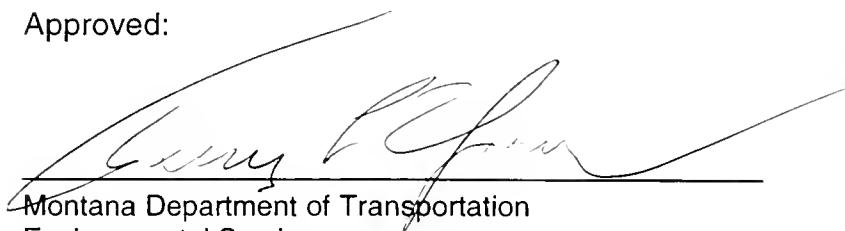
# MDT - PACK AND COMPANY LAND EXCHANGE

## City of Kalispell Flathead County, Montana

This document is prepared in conformance with MEPA requirements and contains the information required for an Environmental Assessment (EA) under the provisions of ARM 18.2.237(2) and 18.2.239.

Submitted pursuant to **Section 75-1-101, et seq. M.C.A.**  
by  
Pack and Company

Approved:



Date 7-13-2000

Montana Department of Transportation  
Environmental Services

The following persons may be contacted for additional information about this document:

Daniel M. Norderud, AICP  
Robert Peccia & Associates, Inc.  
P.O. Box 5653  
Helena, MT 59604  
(406) 447-5000

Terry L. Yarger, P.E., Chief  
Engineering Bureau  
Environmental Services  
Montana Department of Transportation  
P.O. Box 201001  
Helena, MT 59620-1001  
(406) 444-6003



## Table of Contents

Page No.

<b>Title Page</b>		
<b>Table of Contents</b>	i	
<b>PART I.</b>	<b>PROPOSED ACTION DESCRIPTION</b>	1
<b>PART II.</b>	<b>ENVIRONMENTAL REVIEW AND CHECKLIST</b>	10
	Summary of Environmental Impacts and Mitigation	43
<b>PART III.</b>	<b>NARRATIVE EVALUATION AND COMMENT</b>	53
<b>PART IV.</b>	<b>CONCLUSION</b>	53
<b>APPENDIX A: MAPS AND PHOTOS OF AFFECTED PROPERTIES</b>		
<b>APPENDIX B: MDT-PACK AGREEMENT TO EXCHANGE REAL ESTATE</b>		
<b>APPENDIX C: CORRESPONDENCE PERTINENT TO EA</b>		
<b>APPENDIX D: P.U.D. AGREEMENT BETWEEN PACK AND CITY</b>		
<b>APPENDIX E: PUBLIC INVOLVEMENT AND COMMENTS RECEIVED</b>		
<b>APPENDIX F: LAND USE PLAN FOR STATE SCHOOL TRUST LAND</b>		



## **PART I. PROPOSED ACTION DESCRIPTION**

### **1. Type of Proposed State Action**

The Montana Department of Transportation (MDT) and a private landowner (Pack and Company) are proposing an exchange of land holdings adjacent to U.S. Highway 93 north of Kalispell. Through this exchange, MDT would acquire an undeveloped 8.946-acre tract owned by Pack and Company (Pack) in exchange for an 8.88-acre parcel of land owned by MDT locally known as the Hutton Pit. MDT's property serves as a storage area for materials and equipment used for road maintenance and as a base for field engineering operations. The Hutton Pit site contains stockpiles of sand, salt, gravel, and asphalt for road maintenance activities; above-ground storage tanks for liquid de-icers, liquid asphalt, and paint; storage facilities for heavy equipment; and areas for temporarily storing guardrail and other roadway-related items. Communications facilities and office trailers used in MDT's field engineering operations are also present at the Hutton Pit.

The proposed action is being advanced solely at the request of Pack. The exchange of property would allow Pack to consolidate landholdings in the vicinity of the NUPAC Sand and Gravel Company (a subsidiary of Pack) and convert the industrial property NUPAC's gravel pit plus MDT's Hutton Pit site to a commercial development. The phased development of a retail shopping complex and a multi-purpose domed coliseum has been proposed for this 59.14-acre area. Conceptual plans for the development of the property were presented to the City of Kalispell during 1998 and 1999. However, there is currently no firm indication of either the types of commercial businesses that may locate to the property or the timing of the property's development.

The proposed action would necessitate that MDT's maintenance equipment, facilities, and stockpiled materials be moved from the Hutton Pit site to a tract of land owned by Pack located approximately one mile to the north. The costs and actions necessary to make the property suitable for MDT's operations and for relocating MDT's existing equipment, facilities, and stockpiled materials would be Pack's responsibility.

### **2. Agency Authority for the Proposed Action**

MDT – Title 60, Chapter 4, Section 201, M.C.A.

### **3. Name of Project**

MDT - Pack and Company Land Exchange

### **4. Name, Address and Phone Number of Project Sponsor**

Jim Lynch  
Pack and Company  
2355 Highway 93 North  
Kalispell, MT 59901  
(406) 752-4215

Montana Department of Transportation  
2701 Prospect Avenue  
P.O. Box 201001  
Helena, MT 56620-1001  
(406) 444-7228-- Environmental Services

## 5. If Applicable:

**Estimated Construction/Commencement Date:** Summer/Fall 2000 - (Pack Site Preparation)  
Fall 2000 - (Relocate MDT facilities)  
Unknown - (Development of NUPAC land  
and Hutton Pit property)

**Estimated Completion Date of Land Exchange:** Summer 2000

**Current Status of Project Design (% complete):** 0%

## 6. Locations Affected by the Proposed Action (county, range and township)

**MDT's Hutton Pit Parcel** – This 8.88-acre parcel is located north of Kalispell and is legally described as Parcel 2, Tract 3A, Certificate of Survey (COS) #12230 in Flathead County. The land is in the SW $\frac{1}{4}$  NW $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 31, Township-29-North, Range-21-West, M.P.M. MDT's Hutton Pit property lies east of US Highway 93 and about 0.2 miles south of West Reserve Drive.

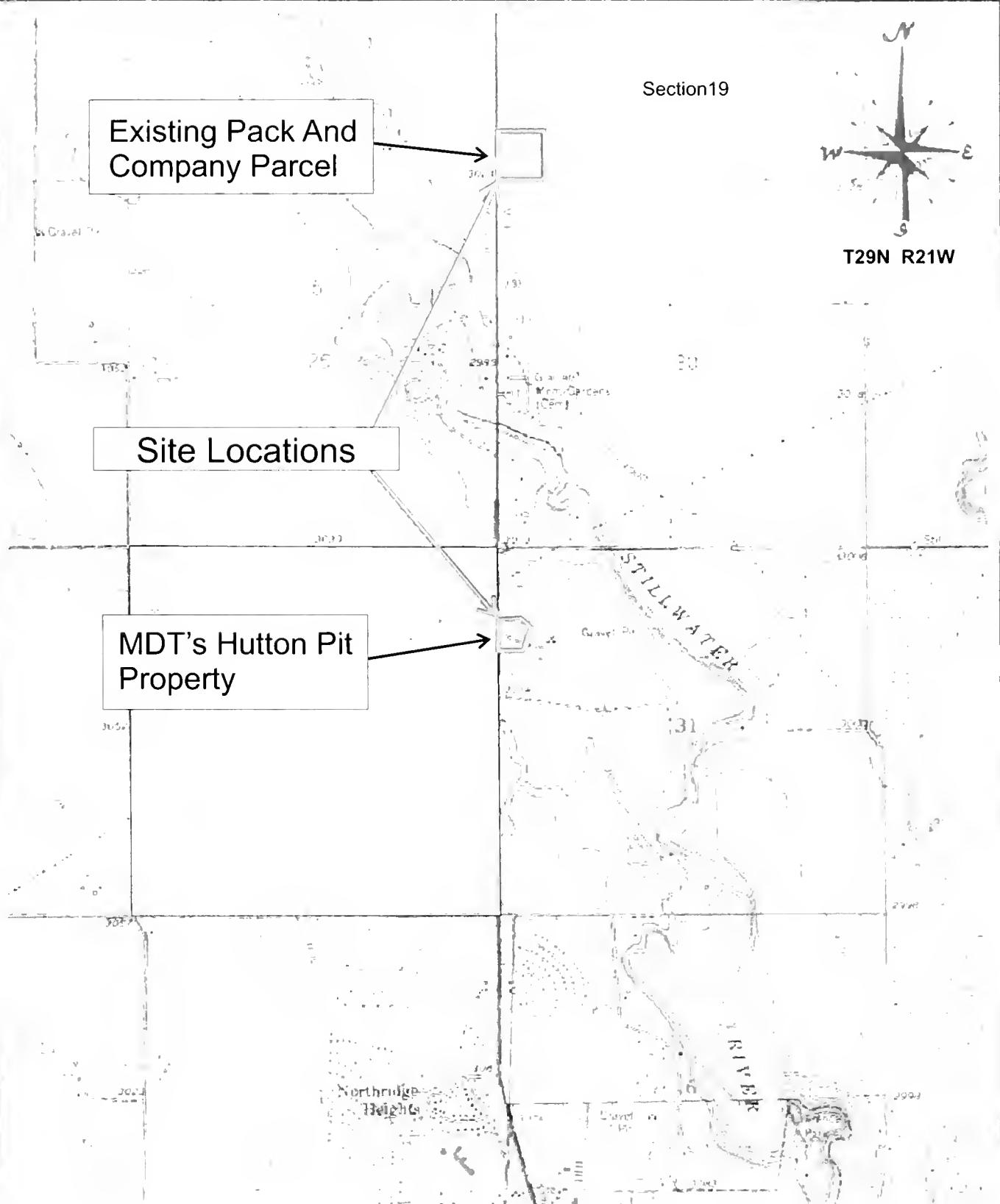
**Existing Pack and Company Parcel** – This 8.946-acre parcel is located north of Kalispell and is legally described as Tract 2G, COS #8673 in Flathead County. The property is situated in the SW $\frac{1}{4}$  SW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 19, Township-29-North, Range-21-West, M.P.M. Pack's land lies east of US Highway 93 and approximately 1.0 mile north of West Reserve Drive.

## 7. Project Size: Estimate the number of acres that would be directly affected that are currently:

(a) Developed:	(d) Floodplain... <u>0</u> acres
residential... <u>  </u> acres	
industrial.... <u>8.88</u> acres	
(b) Open Space/Woodlands/:	(e) Productive
Recreation.... <u>0</u> acres	irrigated cropland..... <u>  </u> acres
(c) Wetlands/Riparian	dry cropland..... <u>8.946</u> acres
Areas..... <u>  </u> acres	forestry..... <u>0</u> acres
	rangeland..... <u>0</u> acres
	Other..... <u>0</u> acres

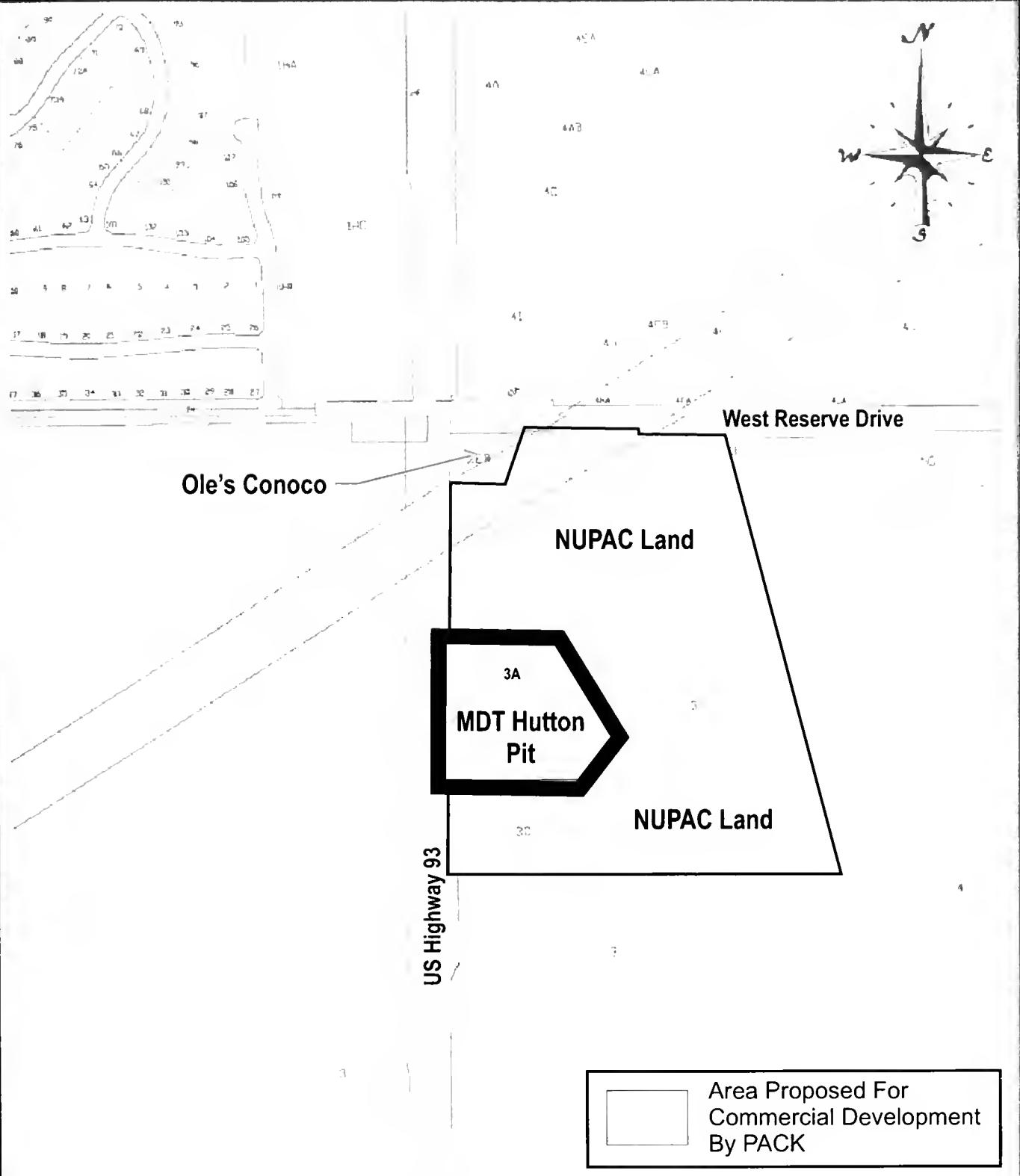
## 8. Map/site plan: attach an original 8 1/2" x 11" or larger section of the most recent USGS 7.5' series topographic map showing the location and boundaries of the areas that would be affected by the proposed action.

**FIGURE 1** depicts the location of MDT's Hutton Pit site and the Pack property on a recent USGS topographic map. Section 36 of Township-29-North, Range-21-W (the highlighted tract shown on **FIGURE 1**) is state school trust land and planning is presently underway for future commercial, professional, and residential development on the 640-acre parcel. **FIGURES 2** and **3** show MDT's Hutton Pit site and the Pack parcel and adjoining tracts of land. Other maps, exhibits, and photographs showing these affected properties can be found in **APPENDIX A**.



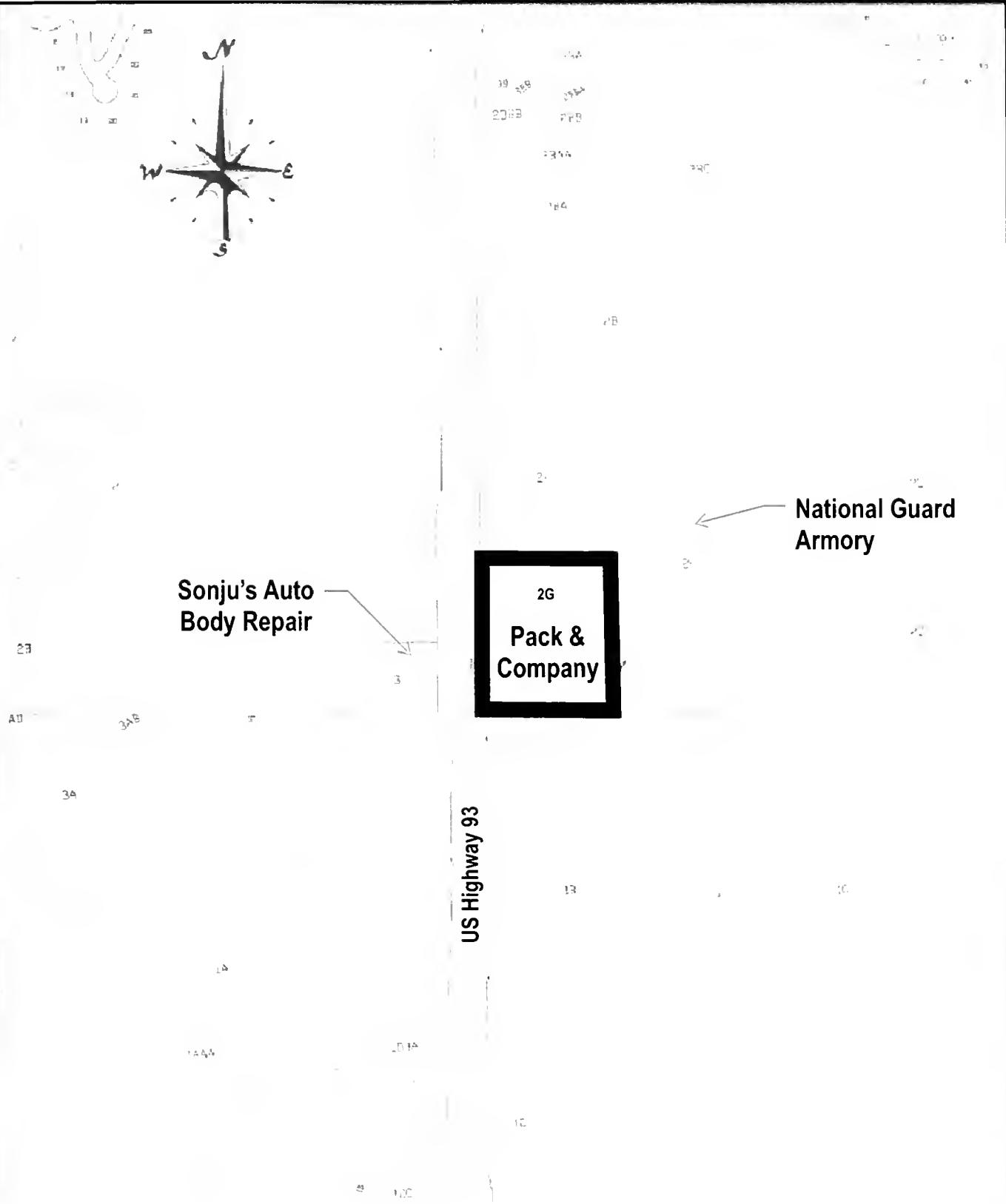
**Figure 1**  
**Vicinity Map For**  
**Subject Properties**





**Figure 2**  
**Location Map**  
**MDT Hutton Pit Property**





## Figure 3 Location Map Pack & Company Property

Scale: 1"=600'

Graph03 cdr8



## 9. Narrative Summary of the Proposed Action or Project including the Benefits and Purpose of the Proposed Action.

The MDT and Pack are proposing an exchange of properties. Under the proposed land exchange, MDT would receive ownership to an 8.946-acre tract located adjacent to the east side of U.S. Highway 93 approximately one mile north of West Reserve Drive. In return, Pack would receive ownership of MDT's 8.88-acre Hutton Pit property located east of U.S. Highway 93 and south of West Reserve Drive. MDT's maintenance/field engineering operations and facilities would be transferred to the property now owned by Pack once the site was suitably prepared for occupancy. Pack would be entirely responsible for the costs of relocating MDT's maintenance/field engineering facilities to a new site.

MDT and Pack reached an agreement to proceed with the proposed land exchange and signed an "Agreement to Exchange Real Estate" on March 30, 2000. Because the proposed land exchange is for the sole benefit of Pack, the firm would be responsible for all costs and regulatory actions necessary to transfer MDT's maintenance/field engineering operations and facilities to a new site. Other key provisions of the Agreement are highlighted below:

- Pack must provide environmental studies on the tracts involved in the trade.
- The firm is responsible for obtaining all necessary governmental approvals (including rezoning) necessary to relocate MDT's maintenance operations.
- The party with the least valued tract will pay the difference in value between the tracts.
- Pack must provide MDT with a copy of the Planned Unit Development Agreement executed by Pack and the City of Kalispell on July 27, 1999 which describes the parameters for the development of its land adjacent to MDT's Hutton Pit property.

A copy of the Agreement between MDT and Pack outlining the conditions of the proposed land exchange is attached to the EA as **APPENDIX B**.

The proposed action would consolidate landholdings for Pack in the vicinity of U.S. Highway 93 and West Reserve Drive where the firm operates a sand, gravel, and ready-mix concrete business (NUPAC Sand and Gravel Company). MDT's property is surrounded on three sides by Pack property. The consolidation of ownership would facilitate the future development of Pack's land. The firm's land (together with MDT's Hutton Pit property) comprises an area of 59.14 acres. This acreage has been the focus of recent proposals for the phased development of a retail complex and a multi-purpose coliseum. The present MDT maintenance/field engineering site and the NUPAC Sand and Gravel Company operations would have to be removed and the land restored prior to the development of commercial or other uses of the property.

As a result of past efforts by a local partnership, the Pack property (NUPAC land) and adjoining MDT land east of U.S. Highway 93 and south of West Reserve Drive were annexed into the City of Kalispell and the City's Master Plan was changed in 1999. The zoning designation for both properties has been changed to permit the development of all B-2 commercial uses. In addition to the retail shopping area and sports coliseum complex, the property has been proposed for commercial development only and as a possible site for relocating the county fairgrounds. Consequently, at this time there is no assurance of what type of development there may be, when it will occur, or its precise impacts. However, planning for the retail development and the multi-purpose coliseum of the property has advanced farther than any of the other proposals at this

time. As a result, that proposal is being used here in an attempt to analyze potential secondary impacts. In other words, Pack's proposed use of the NUPAC gravel pit property and the adjoining Hutton Pit land is the "best guess" as to what type of development may occur on the property. This proposal is described further in the following paragraphs.

The development of the NUPAC land and MDT's Hutton Pit property has been proposed to occur in three stages. At this time, it is expected that the proposal would progress as follows. Site grading and installing the necessary infrastructure for the development would be done first. This would be followed by the development of a retail shopping complex on 36.95 acres of the site. The last stage would involve the construction of a multi-purpose coliseum on the remaining 22.19 acres of the site.

Although detailed site planning and design has yet been completed, the type of commercial development being considered for the property consists of large retail buildings capable of housing hardware, grocery, clothing or discount department stores and associated parking areas. The multi-purpose coliseum, proposed for the southeast portion of the site, would have between 6,500 and 8,500 seats and be capable of accommodating sporting events, concerts, and other uses. **FIGURE 4** shows a conceptual layout of the buildings, parking areas and access roads included in the proposed development on the NUPAC land and MDT's Hutton Pit property.

## **10. Listing of any other Local, State or Federal agency that has overlapping or additional jurisdiction**

### **(a) Permits:**

<u>Agency Name</u>	<u>Permit</u>
Flathead County	Septic System Permit for Pack property
MDT	Approach Application and Permit (Highway 93 Access Changes)
City of Kalispell	Air Quality Construction and Demolition Permit (NUPAC site)

### **(b) Funding:**

<u>Agency Name</u>	<u>Funding Amount</u>
MDT	None. (However, MDT could be obligated to pay difference in appraised value if Hutton Pit is valued less than Pack parcel.)

### **(c) Agencies with Other Overlapping or Additional Jurisdictional Responsibilities:**

<u>Agency Name</u>	<u>Type of Responsibility</u>
MDEQ	Mined Land Reclamation Permit (Pack reclamation of NUPAC Sand and Gravel operations)
MDT	Systems Impact Review Process (to review and approve access, signalization, turn lanes for any future commercial development proposal on NUPAC/Hutton Pit property)

Flathead County  
Board of Adjustment

Hold Hearing to obtain comments on Proposed  
Construction of MDT Facility on Pack property

Dept. of Natural Resources  
and Conservation

Acquire water rights for new well on Pack & Company  
property (if anticipated use exceeds 35 gallons per  
minute or more than 10-acre feet/year) for relocated  
MDT facilities

MDT acquired the Hutton Pit property on July 2, 1943 from Ellen G. Adams by Warranty Deed (see Flathead County Book of Deeds 242, page 166). MDT also acquired all reversionary interests in the property at the time of purchase and is not obligated under 60-4-201(2), MCA to notify the previous owner or successor in interest of MDT's intent to exchange interest in the property.

## **11. List of Agencies Consulted During Preparation of the EA:**

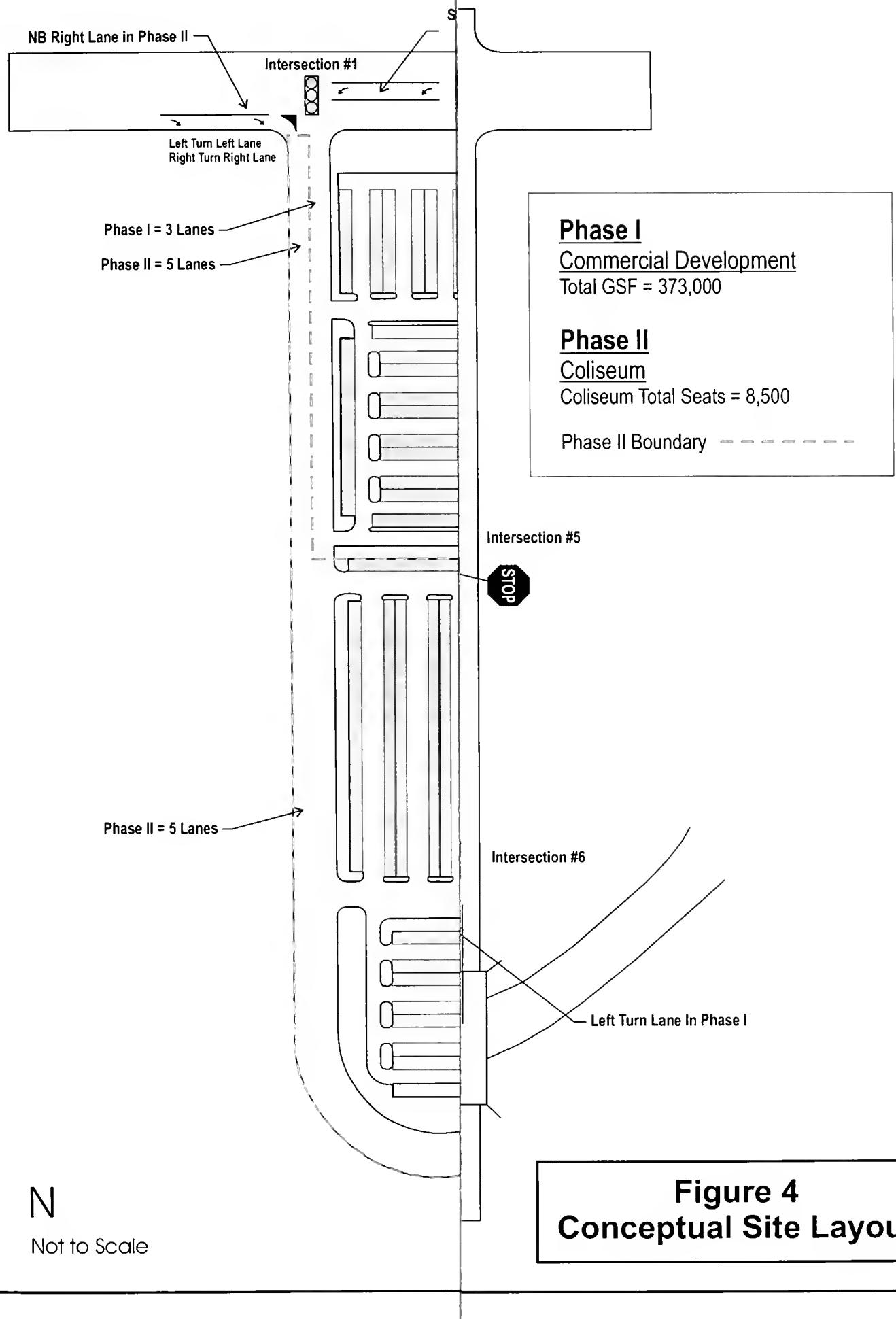
Montana Department of Fish, Wildlife & Parks (Kalispell) – no comments received  
Flathead Regional Development Office – telephone conversations and correspondence received  
Montana Historical Society, State Historic Preservation Office – correspondence received  
Montana Department of Environmental Quality (Kalispell) – telephone contacts  
Montana Department of Transportation Staff Contacts

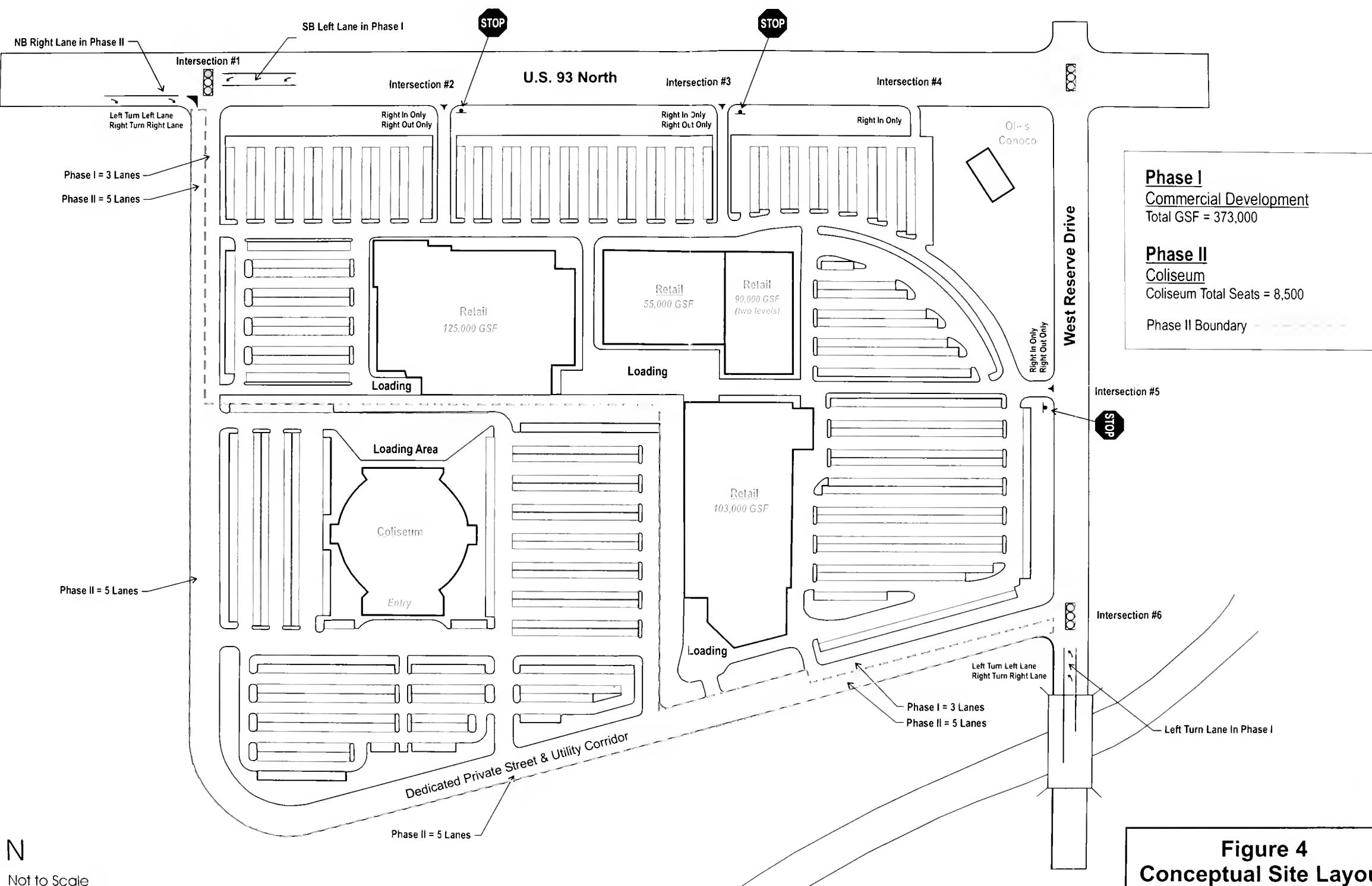
    Larry Murolo, Helena - telephone conversation  
    James Weaver, Missoula - Email correspondence  
    Steve Herzog, Kalispell - telephone conversation .  
    Terry L. Yarger, P.E., Environmental Services (Helena) - personal communications  
    Darin Kaufman, Traffic Engineering (Missoula)-- written comments  
    Kate Fry, Environmental Services -- written comments

Montana Natural Heritage Program (Helena) - correspondence received  
University of Montana Archaeological Records Office - telephone conversations/fax material  
United States Department of the Interior, Fish and Wildlife Service - correspondence received

Copies of pertinent correspondence from some of these agencies are provided in **APPENDIX C.**







**Figure 4**  
**Conceptual Site Layout**

N

Not to Scale

## **PART II. ENVIRONMENTAL REVIEW AND CHECKLIST**

The purpose of this EA is to examine the direct, indirect, and cumulative effects of the proposed land exchange on the physical and human environments. Environmental effects considered in this review include:

- Direct effects caused by the proposed action and occur at the same time and place.
- Indirect (or secondary) effects caused by the proposed action and are later in time or farther removed in distance, but are still reasonably foreseeable. Generally, these impacts are induced by the initial action. Environmental resources that can be sensitive to induced change are things like the social and economic structure of a community, floodplains, and area-wide water quality.
- Cumulative effects are impacts that result from the incremental consequences of an action when added to other past and reasonably foreseeable future actions. These impacts are less defined than indirect effects and may even be undetectable. Nonetheless, such effects can add to other disturbances and eventually lead to a measurable environmental change.

Effects and impacts are synonymous in this evaluation. Where applicable, effects on natural resources and on the components, structures, and functioning of affected ecosystems, on aesthetics, historical, cultural, economic, social, and health are identified and discussed in this Part.

The following Environmental Checklist summarizes both beneficial and detrimental effects of the proposed land exchange on the Physical and Human Environments. The Checklist provides a convenient way to summarize the type and extent of environmental effects expected to result from the land exchange. The items addressed in the Checklist are consistent with factors that must be addressed according to the *MONTANA ENVIRONMENTAL POLICY ACT (MEPA)*. In some instances, comments are provided to clarify the direct effects of the proposed land exchange or to add supplementary information necessary for the narrative discussing reasonably foreseeable secondary and cumulative effects of the land exchange.

The direct effects of the proposed land exchange are relatively limited in nature and extent. More notable are the indirect effects of the proposed action since the land exchange would "clear the way" for commercial development to occur on the NUPAC land and MDT's Hutton Pit property. The development of a commercial complex and/or multi-purpose coliseum is not a certainty and there is only a preliminary design concept to evaluate at this time. Nevertheless, it is recognized that the proposed land exchange could induce impacts that would occur later in time or at locations removed from the subject properties discussed in this EA.

The potential for the proposed land exchange to facilitate or induce growth in the Kalispell area is a known secondary impact under ARM 18.2.236(18). Therefore, according to ARM 18.2.238, such impacts must be taken into consideration when evaluating whether the proposed land exchange "significantly" affects the quality of the environment. The following Environmental Checklist has been used to help determine the significance of the proposed land exchange and whether or not an Environmental Impact Statement (EIS) is necessary under *MEPA*.



## **PART II. ENVIRONMENTAL REVIEW AND CHECKLIST**

The purpose of this EA is to examine the direct, indirect, and cumulative effects of the proposed land exchange on the physical and human environments. Environmental effects considered in this review include:

- Direct effects caused by the proposed action and occur at the same time and place.
- Indirect (or secondary) effects caused by the proposed action and are later in time or farther removed in distance, but are still reasonably foreseeable. Generally, these impacts are induced by the initial action. Environmental resources that can be sensitive to induced change are things like the social and economic structure of a community, floodplains, and area-wide water quality.
- Cumulative effects are impacts that result from the incremental consequences of an action when added to other past and reasonably foreseeable future actions. These impacts are less defined than indirect effects and may even be undetectable. Nonetheless, such effects can add to other disturbances and eventually lead to a measurable environmental change.

Effects and impacts are synonymous in this evaluation. Where applicable, effects on natural resources and on the components, structures, and functioning of affected ecosystems, on aesthetics, historical, cultural, economic, social, and health are identified and discussed in this Part.

The following Environmental Checklist summarizes both beneficial and detrimental effects of the proposed land exchange on the Physical and Human Environments. The Checklist provides a convenient way to summarize the type and extent of environmental effects expected to result from the land exchange. The items addressed in the Checklist are consistent with factors that must be addressed according to the *MONTANA ENVIRONMENTAL POLICY ACT (MEPA)*. In some instances, comments are provided to clarify the direct effects of the proposed land exchange or to add supplementary information necessary for the narrative discussing reasonably foreseeable secondary and cumulative effects of the land exchange.

The direct effects of the proposed land exchange are relatively limited in nature and extent. More notable are the indirect effects of the proposed action since the land exchange would "clear the way" for commercial development to occur on the NUPAC land and MDT's Hutton Pit property. The development of a commercial complex and/or multi-purpose coliseum is not a certainty and there is only a preliminary design concept to evaluate at this time. Nevertheless, it is recognized that the proposed land exchange could induce impacts that would occur later in time or at locations removed from the subject properties discussed in this EA.

The potential for the proposed land exchange to facilitate or induce growth in the Kalispell area is a known secondary impact under ARM 18.2.236(18). Therefore, according to ARM 18.2.238, such impacts must be taken into consideration when evaluating whether the proposed land exchange "significantly" affects the quality of the environment. The following Environmental Checklist has been used to help determine the significance of the proposed land exchange and whether or not an Environmental Impact Statement (EIS) is necessary under *MEPA*.

To compare and contrast the effects of the proposed land exchange, the impacts associated with undertaking or not undertaking the land exchange (no action) are summarized at the conclusion of each section in the Checklist.

**1. Evaluation of the Impacts of the Proposed Land Exchange and the Alternative of Taking No Action on the Physical and Human Environment (Including Secondary and Cumulative Impacts):**

**IMPACTS**

<b>PHYSICAL ENVIRONMENT</b>	UNKNOWN	NO IMPACTS	MINOR IMPACTS:	POTENTIALLY SIGNIFICANT IMPACTS:	CAN IMPACTS BE MITIGATED	COMMENT INDEX
<b>1. LAND RESOURCES</b>						
Will the proposed action result in:						
a. Soil instability or changes in geologic substructure?		×				
b. Disruption, displacement, erosion, compaction, moisture loss, or over-covering of soil which would reduce productivity or fertility?			×		×	1b.
c. Destruction, covering or modification of any unique geologic or physical features?		×				
d. Changes in siltation, deposition or erosion patterns that may modify the channel of a river or stream or the bed or shore of a lake?		×				
e. Exposure of people or property to earthquakes, landslides, ground failure, or other natural hazard?		×				
f. Other: N/A						

**COMMENTS FROM ABOVE:**

1b. The tract of land Pack proposes to exchange with MDT has historically been used as farmland. Relocating MDT's maintenance facilities to the site would remove 8.946 acres of productive farmland from the Flathead Valley and would require that minor amounts of the property be compacted and covered with impermeable surfaces (such as buildings or pavement). The NUPAC gravel pit and MDT's Hutton Pit property are not considered to be productive farmland.

**Secondary and Cumulative Effects on Land Resources:**

The NUPAC gravel pit and MDT's Hutton Pit property would have to be reclaimed pursuant to state law and

graded to allow for future development. Filling, compacting, and grading the gravel pit site would need to be accomplished in a manner compatible with the type of development proposed for the area. If fill areas were not sufficiently compacted, uneven settlement could occur making the design of building foundations difficult. Future builders in the area may need to perform geotechnical investigations to determine if filled areas are prone to settlement and to identify the most effective designs for building foundations.

The development of commercial uses and a multi-purpose coliseum on NUPAC's land and MDT's Hutton Pit site would require that extensive areas of soils be covered by pavement for circulation roads and parking areas and with buildings. The construction of these features would require the compaction of local soils and make much of the property impervious to surface water. The collection and treatment of surface water runoff from the developed site would be mitigated through the provisions of the Planned Unit Development Agreement between the City of Kalispell and Pack.

**Effects of Taking No Action:**

Taking no action would retain 8.946 acres of productive farmland in the Flathead Valley since it would no longer be necessary to relocate MDT's maintenance/field engineering operations to a new site. The activities at the NUPAC gravel pit and MDT's Hutton Pit site would continue until present operations ceased and decisions were made to reclaim the properties to permit the development of other uses. Due to the general lack of impervious areas, moisture falling on the NUPAC's land and MDT's property would continue to percolate through local soils.

**IMPACTS****PHYSICAL ENVIRONMENT**  
(Continued)**2. AIR**

Will the proposed action result in:

a. Emission of air pollutants or deterioration of ambient air quality?

b. Creation of objectionable odors?

c. Alteration of air movement, moisture, or temperature patterns or any change in climate, either locally or regionally?

d. Adverse effects on vegetation, including crops, due to increased emissions of pollutants?

e. Other: N/A

**3. WATER**

Will the proposed action result in:

a. Discharge into surface water or any alteration of surface water quality including but not limited to temperature, dissolved oxygen or turbidity?

b. Changes in drainage patterns or the rate and amount of surface runoff?

UNKNOWN	NO IMPACTS	MINOR IMPACTS:	POTENTIALLY SIGNIFICANT IMPACTS:	CAN IMPACTS BE MITIGATED	COMMENT INDEX
		×		×	2a.
	×	×			

**COMMENTS FROM ABOVE:**

2a. Kalispell and its immediately surrounding area has been designated as a nonattainment area for particulate matter 10 micrometers or smaller in size (PM-10). This designation is based on past violations of the Federal Clean Air Act's National Ambient air quality standards (NAAQS) for PM-10 during winter

months in Kalispell. The U.S. Environmental Protection Agency (EPA) has designated the Kalispell area as a "Moderate" PM-10 nonattainment area. The principal sources of PM-10 that contributed to the past air quality violations were identified as dust from road sanding materials resuspended in the air and particulates generated by wood burning for home heating. Measures, like mandatory use of liquid de-icers, have been successfully implemented and helped reduce wintertime PM-10 levels in the community.

The operation of trucks and other heavy equipment at MDT's Hutton pit generates only minor amounts of PM-10 and other air pollutants. The operation of NUPAC's gravel pit also produces minor amounts of air pollutants (dust) from the operation of heavy equipment like gravel crushers and from trucks entering and leaving the property on unpaved roads. Wind blowing over disturbed areas of the site also has the opportunity to stir up dust and carry it across or off the property.

**3b.** MDT's maintenance/field engineering facilities would be relocated to a site that is currently tilled agricultural land. The development of maintenance buildings, internal roads, and other features would increase the amount of impermeable area and cause minor changes to the amount of surface runoff from the property and surface drainage patterns. The design and layout of the new facilities would include provisions to adequately handle these minor changes in runoff and drainage patterns.

Surface drainage patterns on the NUPAC and MDT's Hutton Pit properties would change since the existing gravel pit and other portions of the properties would be reclaimed and graded to allow future commercial site development.

#### **Secondary and Cumulative Effects on Air and Water Resources:**

**Air Quality.** The proposed land exchange and the associated relocation of MDT's maintenance/field engineering facilities and operations to a nearby site would have negligible effects on local and regional air quality. Since the types of activities conducted at the relocated maintenance/field engineering facilities would be the same as those presently occurring at the Hutton Pit site, little or no changes in localized air quality would be expected.

Construction activities at the site where MDT's maintenance/field engineering operations would be relocated to would create minor-short term adverse effects on air quality from the operation of heavy construction equipment and vehicles.

The reclamation of the NUPAC Sand and Gravel Company site and MDT's Hutton Pit property and the eventual construction of commercial uses on the property would be accomplished with heavy equipment like dozers, loaders, and trucks. The operation of heavy equipment and vehicles would generate minor amounts of air pollutants and would likely cause brief periods of localized dusty conditions on the property. Such emissions would not be expected to result in cumulative adverse effects on air quality in the Kalispell area. An Air Quality Construction and Demolition Permit must be obtained from the City of Kalispell prior to beginning any site grading work on the NUPAC site.

Neither the Pack parcel nor MDT's Hutton Pit are within the designated Kalispell PM-10 nonattainment area. The land exchange and the construction of the proposed MDT maintenance facilities are exempt from Air Quality conformity determinations under the Clean Air Act because the proposed activities are non-federal actions.

Conversion of the gravel pit with its extensive disturbed areas to a commercial development with paved parking lots and circulation roads would provide some localized air quality benefits. Dust-producing activities at NUPAC's gravel pit (gravel crushing, heavy equipment operations, and truck traffic, etc.) would end. The opportunity for windblown dust from the site would also be reduced since disturbed areas would be covered with landscaping or paving. Reclamation and future development on the property would provide driving surfaces and parking areas that can be swept clean of road sanding materials to minimize the potential for new contributions to PM-10 levels in the area.

The development of commercial uses and a multi-purpose coliseum on the Pack property (including MDT's Hutton Pit land) and the proposed development on the nearby school trust land would indirectly affect air quality in the Kalispell area. Such development would attract new vehicle trips to this portion of the Kalispell area and cause localized and minor increases in vehicle-generated pollutants. Adverse effects from these vehicle-generated emissions would be minimized with the installation and proper operation of traffic controls (signalization, turn lanes, etc.) to smooth traffic flows and limit delays and vehicle idling at intersections near the development.

**Surface Water Drainage Patterns and Runoff.** The future development of commercial uses and/or a multi-purpose coliseum on the NUPAC Sand and Gravel property and MDT's Hutton Pit would change the amount of surface water runoff from and drainage patterns on these properties. The construction of buildings, paved access roads, and vehicle parking lots would make much of the development site impermeable to surface runoff. This would be a notable change since the properties currently have few impermeable surfaces.

Commercial development on the properties would have to include design provisions to ensure storm water is adequately collected and transported to on-site detention areas. According to the Planned Unit Development Agreement (see **APPENDIX D**, page 16) with the City of Kalispell, storm water retention, drainage and disposal must comply with regulations established by the City and the Montana Department of Environmental Quality. The Agreement specifies that storm water will not be retained, treated or discharged off-site. Consequently, the impacts associated with increased surface runoff would be mitigated below the significance level.

**Effects of Taking No Action:**

The operation of NUPAC's gravel pit would continue to produce minor amounts of air pollutants (dust) from the operation of heavy equipment like gravel crushers and from trucks entering and leaving the property on unpaved roads. Wind blowing over disturbed areas of the site also has the opportunity to stir up dust and carry it across or off the property.

The operations of the NUPAC gravel pit and MDT's Hutton Pit site would continue unchanged from present conditions. Activities at these sites do not generate substantial amounts of point-source emissions or vehicle-generated pollutants. Surface water runoff amounts and drainage patterns would be unchanged on the properties since there would be no need to construct new roads or parking areas.

Continued gravel mining at the NUPAC pit has the potential to encounter groundwater as the pit deepens.

IMPACTSPHYSICAL ENVIRONMENT  
(Continued)3. WATER (continued)

Will the proposed action result in:

c. Alteration of the course or magnitude of flood water or other flows?

d. Changes in the amount of surface water in any water body or creation of a new water body?

e. Exposure of people or property to water related hazards such as flooding?

f. Changes in the quality of groundwater?

g. Changes in the quantity of groundwater?

h. Increase in the risk of contamination of surface or groundwater?

i. Violation of the Montana Non-Degradation Statute?

j. Effects on any existing water right or reservation?

k. Effects on other water users as a result of any alteration in surface or groundwater quality?

l. Effects on other users as a result of any alteration in surface or groundwater quantity?

m. Other: N/A

UNKNOWN	NO IMPACTS	MINOR IMPACTS:	POTENTIALLY SIGNIFICANT IMPACTS:	CAN IMPACTS BE MITIGATED	COMMENT INDEX
	×				3c. See 3c. 3f. 3h. 3j.

**COMMENTS FROM ABOVE:**

3c. According to Flood Insurance Rate Maps (FIRM) developed by the Federal Emergency Management Agency (FEMA), neither MDT's Hutton Pit nor the property Pack proposes to exchange lie within designated 100-year floodplains. Community Panel #300023-1805D (revised September 30, 1992) and Community Panel #300023-1415C (effective date September 5, 1984) show both properties to be within

areas designated as Zone C (areas of minimal flooding). These areas are beyond the 500-year floodplain of the Stillwater River.

- 3f. Due to the mining of gravel at the NUPAC gravel pit below the original surface, the depth to groundwater is less at the bottom of the pit than on surrounding lands. Placing fill material within the pit and regrading the site would increase the depth to groundwater and provide a greater opportunity for contaminants to be attenuated before groundwater is encountered.
- 3h. MDT is presently in the process of assessing the extent of hazardous waste contamination at the Hutton Pit property. Once remediation of this contamination is done, a potential source of groundwater contamination will be removed.
- 3j. MDT holds a Certificate of Water Right (No. 88661-G76LJ) for a well on the Hutton Pit property. The water right has a priority date of January 20, 1994 and maximum flow rate of 20 gallons per minute. Under the proposed action, the water right would have to be transferred to NUPAC (the new owner). A new well would have to be drilled and water rights acquired to provide domestic water for MDT's maintenance/field engineering operations that would be relocated to the Pack property.

#### **Secondary and Cumulative Effects on Water Resources:**

Inherent to the PUD Agreement with Pack, is the understanding that the City of Kalispell has sufficient reserve capacity to supply water and treat wastewater from the proposed commercial development. Pack would be responsible for designing and installing water and sanitary sewer infrastructure on the NUPAC land and MDT's Hutton Pit property in accordance with the City of Kalispell's Standards for Design and Construction. Once the installation of these facilities is completed, the water and sanitary sewer lines would be dedicated to the public. The City would then be responsible for future maintenance of the main utility lines through NUPACs' property.

The extension of municipal water and sanitary sewer to serve the proposed development on NUPAC land and the nearby State school trust land could indirectly benefit groundwater. Having municipal services in the U.S. Highway 93 and West Reserve Drive area could benefit the aquifer beneath this portion of the Flathead Valley by allowing the existing Mountain Villa Apartments and the Country Estates (a proposed 135-unit subdivision) to use centralized water and sewer instead of individual septic systems and wells. This would decrease the demand for water from the aquifer and lessen the potential for contamination of area groundwater.

Therefore, the effects on water from the foreseeable secondary and cumulative effects would likely be beneficial, and certainly not significant in any negative way.

#### **Effects of Taking No Action:**

Taking no action would not affect or increase flood hazards or cause notable effects to surface waters and groundwater. There would be no need to transfer water rights for MDT's well on the Hutton Pit property to Pack. Also, there would be no need to drill a new well and acquire water rights on the property Pack proposes to exchange with MDT. Known soil contamination at the Hutton Pit site would be still be remediated by MDT.

IMPACTS

<u>PHYSICAL ENVIRONMENT</u> (Continued)	UNKNOWN	NO IMPACTS	MINOR IMPACTS:	POTENTIALLY SIGNIFICANT IMPACTS:	CAN IMPACTS BE MITIGATED	COMMENT INDEX
<b>4. VEGETATION</b>						
Will the proposed action result in:						
a. Changes in the diversity, productivity or abundance of plant species (including trees, shrubs, grass, crops, and aquatic plants)?		×				
b. Alteration of a plant community?		×				
c. Adverse effects on any unique, rare, threatened, or endangered plant species?		×				4c.
d. Reduction in acreage or productivity of any agricultural land?			×			4d.
e. Establishment or spread of noxious weeds?			×			4e.
I. Other: N/A						

**COMMENTS FROM ABOVE:**

4c. The Montana Natural Heritage Program (MNHP) was contacted on December 10, 1999 regarding the presence of unique, rare, or sensitive plant species. According to the MNHP, no sensitive plants exist on or near the properties involved in the proposed land exchange.

4d. The tract of land Pack proposes to exchange with MDT has historically been used as farmland. Relocating MDT's maintenance facilities to the site would remove 8.946 acres of productive farmland from the Flathead Valley.

4e. New land disturbances offer the potential for the migration and establishment or spread of noxious weeds unless efforts are made to re-establish permanent desirable vegetation communities on areas disturbed by the construction. Development on the site where MDT's maintenance facilities would be relocated to would be subject to the provisions of the County Noxious Weed Management Act and other county noxious weed control provisions.

**Secondary and Cumulative Effects on Vegetation Resources:**

The conversion of less than 9 acres of farmland to other land uses is not in itself a notable impact. However, this

conversion together with the eventual conversion of some 480 acres of land on the nearby State school trust land represents a considerable loss of farmland in the immediate Kalispell area over the next few decades. The cumulative losses of farmland due to such conversions could ultimately reduce agricultural efficiency, drive up land values and increase competition for land between rural and suburban interests, and change the "rural" character of the Flathead Valley.

The commercial development proposed for the NUPAC land and MDT's Hutton Pit property would involve landscaping activities. The Planned Unit Development Agreement between the City of Kalispell and Pack specifies that landscaping would be an integral part of the site's design. The introduction of suitable vegetation (trees, shrubs, and grass) as landscaping would enhance the appearance of an industrial site (gravel pit) that has little existing vegetation.

**Effects of Taking No Action:**

Taking no action would not result in the conversion of farmland or change the vegetation communities that exist on the subject properties. Also, taking no action would leave the gravel pit and MDT's Hutton Pit maintenance/field engineering facilities as they now exist for the foreseeable future.

IMPACTSPHYSICAL ENVIRONMENT  
(Continued)5. FISH/WILDLIFE

Will the proposed action result in:

a. Deterioration of critical fish or wildlife habitat?

X

b. Changes in the diversity or abundance of game animals or bird species?

X

c. Changes in the diversity or abundance of non-game species?

X

d. Introduction of new species into an area?

X

e. Creation of a barrier to the migration or movement of animals?

X

f. Adverse effects on any unique, rare, threatened, or endangered species?

X

g. Increase in conditions that stress wildlife populations or limit abundance (including harassment, legal or illegal harvest or other human activity)?

X

h. Other: N/A

5f.

5g.

UNKNOWN	NO IMPACTS	MINOR IMPACTS:	POTENTIALLY SIGNIFICANT IMPACTS:	CAN IMPACTS BE MITIGATED	COMMENT INDEX

**COMMENTS FROM ABOVE:**

5f. The Montana Natural Heritage Program (MNHP) and the U.S. Fish and Wildlife Service (USFWS) were contacted in December 1999 about the presence of unique, rare, and threatened or endangered species in the vicinity of the proposed action. The USFWS indicated that the threatened bald eagle may occur in the area as a spring and fall migrant and as a winter resident. The threatened bull trout may also be present in the Stillwater River drainage. The results of the MNHP's search for sensitive species did not identify either bald eagles or bull trout as being present in the vicinity of the properties involved in the proposed land exchange.

The Canada lynx was listed by the USFWS as a threatened species on March 24, 2000. Lynx are

generally associated with boreal forests in northern latitudes and with extensive tracts of dense forest with varying habitat features such as bogs, rocky outcrops, and thickets in the lower United States. Since this type of habitat does not occur in the areas affected by the proposed land exchange, the species would not be likely occur in the area.

The majority of bald eagle use in the Kalispell area is limited to Flathead Lake and the Flathead River although locations within the entire area could be used for either nesting, or as foraging and roosting habitat for migrants and non-breeding eagles. Nests are known to exist at three locations along the north shore of Flathead Lake near Somers (Western EcoTech, Abbreviated Biological Resources Report for MDT Transportation Projects-Somers Area, January 2000) and at several locations along the Flathead River. None of the nest sites are believed to be located within 2.5 miles (the area generally recognized as the "home range" for nesting bald eagles) of the properties involved in the proposed land exchange. Both properties are located on land generally devoid of large trees that could be used as roosts or perch sites. The subject properties are also immediately adjacent to U.S. Highway 93 and are currently subjected to human disturbances including industrial, commercial, residential, and agricultural activities. For these reasons, the proposed land exchange would have no effect on bald eagles or its essential habitat.

Activities that could adversely affect water quality and work occurring directly within or close to streams pose threats to bull trout. Increases in turbidity and suspended sediment in bull trout waters can result in temporary reductions in stream productivity, reduction of feeding opportunities, and avoidance of important habitat for the species. The properties involved in the proposed land exchange are not located adjacent to the Stillwater River or its tributaries. The use of measures to control erosion during the construction of MDT's new maintenance facility would minimize the potential for sediment to be transported to surface waters. The proposed land exchange and the associated relocation of MDT's maintenance activities to a new site would not cause adverse effects to bull trout. This conclusion was made because no work would occur in the Stillwater River and surface water quality would not be adversely affected by the proposed activities.

The MNHP indicated that the black tern, a sensitive bird species, has been reported along the Stillwater River about 5 miles northwest of the involved properties. The proposed action would not be expected to have any adverse effects on black terns because wetlands or riparian corridors, important habitat for the species, do not exist on either property.

- 5g. New land disturbances and construction activities may cause temporary displacement of or a loss of habitat for small non-game animals or birds that inhabit the properties.

#### **Secondary and Cumulative Effects on Fish/Wildlife:**

Notable cumulative effects to bald eagles and bull trout are not expected due to the minor scope of the proposed land exchange and associated relocation of MDT's maintenance facilities and the low potential for the species to occur in the project area. Continued human development in the general project area and Flathead Valley would remove and/or degrade habitat for threatened or endangered species, sensitive species, and other wildlife. As indicated previously in this part, the Planned Unit Development Agreement specifies that storm water will not be retained, treated or discharged off-site. Consequently, impacts to bull trout and habitat for this threatened species would be negligible since surface runoff and sediments would not reach the Stillwater River.

It is impossible to predict (it is not "reasonably foreseeable") what effects this proposed exchange might have on further development in this area, except for the planned commercial development. The planned development would not have secondary or cumulative effects, other than the minor effects on fish and wildlife previously described. The mitigation measures contained in the Planned Unit Development Agreement insure that such impacts would remain minor.

**Effects of Taking No Action:**

No action would leave in place, at least for the foreseeable future, a large gravel pit with associated activities like gravel crushing and the operation of heavy equipment and trucks. This alternative would not affect fish or wildlife species in the project area in a manner other than what is already occurring. Continued development in the Flathead Valley would remove and/or degrade habitat for threatened or endangered species, sensitive species, and other wildlife.

**IMPACTS**

<b><u>HUMAN ENVIRONMENT</u></b>	UNKNOWN	NO IMPACTS	MINOR IMPACTS	POTENTIALLY SIGNIFICANT IMPACTS:	CAN IMPACTS BE MITIGATED	COMMENT INDEX
6. <u>NOISE/ELECTRICAL EFFECTS</u>  Will the proposed action result in:  a. Increases in existing noise levels?  b. Exposure of people to severe or nuisance noise levels?  c. Creation of electrostatic or electromagnetic effects that could be detrimental to human health or property?  d. Interference with radio or television reception and operation?  e. Other: N/A			×			6a.

**COMMENTS FROM ABOVE:**

6a. The lands affected by the proposed action lie adjacent to U.S. Highway 93 a rural arterial roadway with significant amounts of existing traffic-generated noise. Trucks and other equipment operating at NUPAC's gravel pit and MDT's maintenance/field engineering facility are existing sources of noise. The present uses of these lands are not sensitive to noise.

Temporary increases in noise would be expected during the construction activities required to ready the Pack property for MDT's maintenance operations. Noise would also be generated during the movement of equipment and materials to the site. Such impacts would be localized to the area and be short-term in nature.

Noise would be generated during reclamation and subsequent development activities on Pack's property (NUPAC Sand and Gravel Company) and MDT's Hutton Pit. Sources of noise would include heavy equipment operating to reclaim the NUPAC gravel pit and to construct buildings, access roads, and parking areas on the property. The noise impacts would be temporary and generally confined to the area of construction.

**Secondary and Cumulative Effects on Noise/Electrical Effects:**

Conversion of the NUPAC gravel pit and MDT's Hutton Pit property to commercial uses would be expected to result in decreased noise levels on the properties. Existing noise associated with mining and crushing gravel, heavy equipment operating on the site, and trucks traveling to and from the industrial site would cease. Typical

noise levels associated with the operation of trucks and other equipment on the properties range from about 75 to more than 90 dBA at distances of 50 feet ("Noise from Construction Equipment and Operations, Building Equipment, and Home Appliances," U.S. Environmental Protection Agency, 1971). Ultimately, the noise generated by the proposed commercial development of the property would be less than present levels and associated with low-speed movements of vehicles (primarily medium trucks and automobiles) within the site and with mechanical/electrical systems for buildings. Automobiles and medium trucks generate noise levels of typically 62 and 73 dBA, respectively, at a distance of 50 feet and travel speeds of 30 mph. The noise produced by these activities would generally be confined to Pack's property.

The NUPAC gravel pit and MDT's Hutton Pit are located in the relatively "noisy" roadside environment of U.S. Highway 93 North. The Somers-Whitefish Final EIS (September 1994) prepared for the expansion of U.S. Highway 93 examined the noise environment and existing noise levels in the project area. According to the Final EIS, existing noise levels within 100 feet of the highway were approximately 64 dBA.

The development of commercial uses on the Pack property (and MDT's Hutton Pit land) as well as the proposed development on the nearby school trust land would contribute to increases traffic-related noise levels in the vicinity of U.S. Highway 93 and West Reserve Drive. The type of development proposed for this area would attract new vehicle trips adding to ambient noise levels along the roadways. The increases in traffic-generated noise are viewed as minor since the types of development proposed are not noise sensitive land uses. Appropriate building setbacks and design, roadside grading, and landscaping of the property along the roadway would help attenuate some traffic-generated noise.

#### **Effects of Taking No Action:**

No action would leave in place, a large gravel pit with associated noise-producing activities like gravel crushers, the operation of heavy equipment, and trucks moving from and to the gravel pit and MDT's maintenance/field engineering facilities. The noise levels generated by operations at the gravel pit site and MDT's facilities would be unchanged from existing conditions.

The Somers-Whitefish Final EIS predicted that noise levels along U.S. Highway 93 would continue to increase over the foreseeable future as traffic volumes rise. The conclusions in the Final EIS provides a reasonable representation of noise conditions under the no action alternative because future noise levels were predicted without these specific development proposals in the U.S. Highway 93 and West Reserve Drive area. Since the development of the State land appears inevitable over the next several decades, it is reasonable to assume that noise levels from traffic generated by its development would also contribute to increases in traffic-related noise in the area.

**IMPACTS**

<b><u>HUMAN ENVIRONMENT</u></b> (Continued)	UNKNOWN	NO IMPACTS	MINOR IMPACTS:	POTENTIALLY SIGNIFICANT IMPACTS:	CAN IMPACTS BE MITIGATED	COMMENT INDEX
<p><b>7. LAND USE</b></p> <p>Will the proposed action result in:</p> <p>a. Alteration of or interference with the productivity or profitability of the existing land use of an area?</p> <p>b. Conflict with a designated natural area or area of unusual scientific or educational importance?</p> <p>c. Conflict with any existing land use whose presence would constrain or potentially prohibit the proposed action?</p> <p>d. Adverse effects on or relocation of residences?</p> <p>e. Other: N/A</p>				×		7a.

**COMMENTS FROM ABOVE:**

**7a.** NUPAC currently operates a sand, gravel, and ready-mix concrete business on the land adjoining MDT's Hutton Pit property. Several small retail businesses are located nearby on the southeast corner of the U. S. Highway 93 and West Reserve Drive intersection including a gas station/convenience store (Ole's Gas and Sub Stop), a hair salon (New Beginnings Hair Design), a scuba dive shop (Big Horn Aquatics), and a drive-thru espresso coffee business (Coffee Time Espresso). Mountain Villa Apartments are situated on the northwest corner of U.S. Highway 93 and West Reserve Drive and the proposed 135-unit Country Estates residential subdivision located west of the Mountain Villa complex. The land on the northeast corner of the intersection is vacant although the Riverside Alliance Church exists nearby on West Reserve Drive east of U.S. Highway 93.

The Pack property (NUPAC land) and adjoining MDT land east of U.S. Highway 93 and south of West Reserve Drive were annexed into the City of Kalispell and the City's Master Plan was changed in 1999. The zoning designation for both properties has been changed to permit the development of all B-2 commercial uses.

The land on the southwest corner of the U.S. Highway 93 and West Reserve Drive intersection is school trust property owned by the State of Montana. Presently, nearly 160 acres of the 640-acre property across the U.S. Highway 93 from the Flathead Valley Community College campus is being leased by the City of Kalispell for the development of a sports field complex. The remainder of the property is leased for farming except the small tract where the Montana Department of Natural Resources and Conservation (DNRC) maintains an office. The location of the school trust land in relation to the NUPAC land and

MDT's Hutton Pit site is shown on **FIGURE 1** and on a more detailed land use plan graphic provided in **APPENDIX E**.

Existing land uses in the vicinity of the property Pack proposes to exchange with MDT include the National Guard Armory located directly to the east and Sonju's Auto Body Shop located directly west of U.S. Highway 93 opposite the Pack property. The remainder of the nearby land is vacant or used for agricultural purposes. The Pack's property is located in the Highway 93 North Zoning District and is zoned SAG-10. This designation means the area is within a Suburban Agricultural zoning district and has a 10-acre minimum lot size requirement. The intent of the district is to provide a buffer between urban development to the south and agricultural uses in the vicinity of the Pack property. There are some non-agricultural and non-residential uses in the area but these uses generally existed prior to the time zoning was adopted or were approved through the granting of conditional use permits.

The MDT maintenance facility is not a permitted use in the SAG-10 zoning district; however, governmental agencies like MDT are exempt from zoning regulations according to Section 76-2-402, M.C.A. It will be necessary for a public hearing to be held before the Flathead County Board of Adjustment to obtain public comment on this proposed use.

#### **Secondary and Cumulative Effects on Land Use:**

The type of development proposed for NUPAC's land near the intersection of U.S. Highway 93 and West Reserve Drive would have long-term effects on land use since the existing industrial area would be changed to commercial uses. The many issues and effects associated with such a change in land use have been extensively discussed in the community since the development was first proposed in 1998. Based on these discussions, the City Council in Kalispell subsequently agreed to amend the City-County Master Plan to allow commercial zoning of the NUPAC property. NUPAC's property and MDT's Hutton Pit property were also annexed into the City of Kalispell during 1999.

The conversion of NUPAC's land and MDT's adjoining Hutton Pit property into commercial shopping complex and a multi-purpose coliseum would allow the property to be used for a higher (and more profitable) purpose than mining gravel. Development of the property must be done in accordance with the terms of a Planned Unit Development Agreement between Pack and the City of Kalispell. The Agreement essentially spells out what the developer intends to do on the property and how it would be done. A copy of the Planned Unit Development Agreement can be reviewed in **APPENDIX D**.

The proposed development of 480 acres of school trust property west of the NUPAC/Hutton Pit property would likely proceed over the next decade or two regardless of Pack's development plans. Since 1997, the Montana DNRC has coordinated their efforts to develop a plan for the "highest and best use" of the school trust property with the City of Kalispell and Flathead County. During 1999, a "neighborhood plan" was developed for all but about 20 acres of the property identifying a variety of possible uses including mixed commercial uses, offices, a business park, and residences. A figure showing general land use plan for the development of the school trust property in relation to the NUPAC/Hutton Pit property is contained in **APPENDIX F**. The Kalispell City-County Planning Board, the Kalispell City Council, and the Flathead County Commission have approved the neighborhood plan. During May 2000 the DNRC completed and signed a Memorandum of Understanding (MOU) with the City and County that spells out the process the three entities will follow for the orderly transformation of school trust land into commercial and residential tracts.

It should be noted that two organizations, the Montana Environmental Information Center and Citizens for a Better Flathead, filed a lawsuit on June 27, 2000 asking for a court order to stop the State Land Board and DNRC from developing the school trust property without first preparing an appropriate environmental impact study. The DNRC contends that its proposal to conduct site-specific environmental analyses for individual leases of the land

would comply with the *MONTANA ENVIRONMENTAL POLICY ACT*. The lawsuit has yet to be heard by District Court.

The conversion of NUPAC's property to sites for commercial uses along with the planned commercial, professional and residential development of school trust land immediately to the west would constitute a change in land use in the vicinity of US Highway 93 and West Reserve Drive. The availability of large tracts with municipal water and sewer service suitable for commercial, professional and residential buildings should be attractive to developers. However, the Planned Unit Development Agreement between Pack and the City of Kalispell and the MOU between the DNRC, City, and Flathead County would help assure that growth occurs in a logical and manageable fashion. These agreements would also help assure that the adverse effects of such growth would be minor.

Future development on the NUPAC land (and MDT's Hutton Pit property) and the school trust land may also induce growth on other nearby lands. With the extension of municipal water and sewer into these lands, it becomes easier for such services to be extended to adjoining properties. The full extent of any such speculative development is not reasonably foreseeable and may take decades. It must also be realized that many factors, other than the availability of community services and infrastructure (sewer, water, streets, etc.) Just to name a few, there must be willing developers, available money from lending institutions, affordable land, and an expanding economy. Due to the many factors, all of which are unpredictable, no further speculations can be made regarding what future development may occur in this area.

Future development on lands adjoining NUPAC's property or the school trust land would be subject to reviews and approvals by Flathead County and/or the City of Kalispell. Conditions imposed on future development by the City or County would help minimize any adverse effects like traffic impacts, the need for community services, and incompatible development patterns.

#### **Effects of Taking No Action:**

If this land exchange were not implemented, NUPAC and MDT would continue their operations on their respective properties. The land pack proposes to exchange for the MDT's Hutton Pit site would continue to be used as vacant agricultural land.

Major land use changes in the vicinity of U.S. Highway 93 and West Reserve Drive would likely occur without undertaking the proposed land exchange and Pack's subsequent development of its property. According to an article from the August 25, 1998 edition of the *Daily Interlake*, DNRC staff indicated "the project (development of 480 acres of school trust land) was not prompted by the proposed Valley Dome complex across Highway 93." Instead, the driving force behind the proposed development of the trust land is to achieve a public mandate to generate revenue for the state school system. The DNRC seeks to accomplish this by leasing the property for development in a manner consistent with surrounding land uses and in conformance to local land use plans and regulations.

**IMPACTS**

<b>HUMAN ENVIRONMENT</b> (Continued)	UNKNOWN	NO IMPACTS	MINOR IMPACTS:	POTENTIALLY SIGNIFICANT IMPACTS:	CAN IMPACTS BE MITIGATED	COMMENT INDEX
8. <u>RISK/HEALTH HAZARDS</u>  Will the proposed action result in:  a. Risk of an explosion or release of hazardous substances (including, but not limited to oil, pesticides, chemicals, or radiation) in the event of an accident or other forms of disruption?  b. Affect an existing emergency response or emergency evacuation plan or create a need for a new plan?  c. Creation of any human health hazard or potential hazard?  d. Other: N/A			×			8a.

**COMMENTS FROM ABOVE:**

**8a.** Seven above ground storage tanks (ASTs) are present on MDT's Hutton Pit property. Two of the AST's are used to store oil-based, non-leaded paint (yellow and white) used for striping roads. The other AST's are used to store emulsified asphalt and deicing liquids, substances that are not considered to be hazardous. MDT's facility is listed as a small quantity hazardous waste generator under the Resource Conservation and Recovery Act (RCRA) because some oil-based paint waste is generated at the site. Between 1994 and 1999, the MDT facility was listed as a large generator of lead-based and oil-based paint under RCRA. MDT discontinued the use of lead-based paint after April 1998.

Under the proposed land exchange, the ASTs and their contents would be relocated to the Pack property. The potential for an accidental release of oil-based paint would exist at the new maintenance site just as it now does at the existing facility. Routine compliance inspections of ASTs by staff and regulatory agencies minimize the possibility for an accidental hazardous waste spill at the MDT maintenance facility.

**8c.** Land & Water Consulting, Inc. of Kalispell completed a Phase I environmental assessment report for hazardous materials for the properties involved in the proposed land exchange during January 2000. Land & Water Consulting found that the tract of land owned by Pack has been historically used as farmland. No evidence was found that the property has ever been associated with the manufacture, disposal, or release of hazardous substances. Site investigations revealed that two hazardous waste concerns exist on MDT's Hutton Pit property. Land & Water Consulting found soil staining on a portion of the property

(150 square feet to an unknown depth) that showed an elevated concentration of diesel fuel nearly twice as high as the cleanup concentration allowed by the MDEQ for petroleum contaminated soils at industrial sites. Soil with petroleum concentrations above allowable limits must be mitigated.

Land & Water Consulting also reported that partially-filled drums of leaded paint are buried on the property although the number and condition of the drums is unknown. MDT is currently in the process of locating buried drums on the Hutton Pit property and characterizing any waste associated with the drums. MDT will remove and properly dispose of the drums and associated waste. These activities should be completed during the summer of 2000.

**Secondary and Cumulative Effects on Risk/Health Hazards:**

Seven underground storage tanks (USTs) exist on NUPAC's land immediately adjacent to MDT's Hutton Pit property and two USTs exist at the nearby Ole's Country Store. There are no records of past leak or suspected leaks from any of these USTs. Prior to new commercial development on the NUPAC property and MDT's adjoining Hutton Pit site, the USTs associated with the sand and gravel operation would have to be removed for reuse or proper disposal.

Other than the inherent risks associated with driving to or from the proposed commercial development, the proposed action would not create or release any other hazardous materials.

**Effects of Taking No Action:**

MDT is aware of the buried drums and petroleum-contaminated soils on its Hutton Pit property and efforts are presently underway to clean up the site. It is assumed that once these wastes have been removed and properly disposed of there would be no other notable risk or health hazards present at the Hutton Pit site.

IMPACTS

<u>HUMAN ENVIRONMENT</u> (Continued)	UNKNOWN	NO IMPACTS	MINOR IMPACTS:	POTENTIALLY SIGNIFICANT IMPACTS:	CAN IMPACTS BE MITIGATED	COMMENT INDEX
9. <u>COMMUNITY IMPACTS</u>  Will the proposed action result in:  a. Alteration of the location, distribution, density, or growth rate of the human population of an area?  b. Alteration of the social structure of a community?  c. Alteration of the level or distribution of employment or community or personal income?  d. Changes in industrial or commercial activity?  e. Increased traffic hazards or effects on existing transportation facilities or patterns of movement of people and goods?  f. Other: N/A			×			

**COMMENTS FROM ABOVE:**

9d. The proposed land exchange would move MDT's maintenance and storage facilities to a new site approximately one mile north of the Hutton Pit location. This relocation would convert vacant agricultural land to an industrial use.

9e. Relocating MDT's maintenance facility from the Hutton Pit site northward to Pack's property would cause minor changes in travel patterns for MDT employees living in the area. Depending on where they reside, MDT employees would be required to drive one mile further or one mile less on U.S. Highway 93 to access the new maintenance facility. Relocating MDT's maintenance facilities one mile further north would not result in any permanent increases in traffic on U.S. Highway 93. Construction activities to prepare the Pack property for MDT's facilities would cause short-term increases in vehicle trips on the highway and some adjoining roads.

**Secondary and Cumulative Effects on Community Impacts:**

**Population and Growth Rates.** Flathead County, including the City Kalispell, is currently among the fastest growing areas in Montana. The County's estimated population increased by nearly 23% over the 1990-1999 period and the City's population grew by more than 35% over the 1990-1998 period (Montana Department of Commerce, Census and Economic Information Center, June 2000).

The proposed land exchange and subsequent development of NUPAC's land for commercial uses would have only minor indirect effects on the total population and growth rate of the Kalispell area. Retail sales businesses locating to the property would employ managers and full-time service workers. With the exception of management for new retail establishments, it is likely that most new employees would already be Flathead Valley residents. This new commercial employment would not create a substantial demand for new housing.

**Employment and Income.** The proposed development on NUPAC's land and on MDT's Hutton Pit property would increase opportunities for new commercial establishments to locate in Kalispell. New businesses would create opportunities for employment and in turn, increase personal income and expenditures within the community. Existing jobs at NUPAC's sand and gravel operation would be transferred to other locations in the Flathead Valley.

**Changes in Industrial and Commercial Activity.** Abandonment of the NUPAC Sand and Gravel operation and reclamation of the existing pit would have to occur prior to the development of commercial uses on NUPAC's land and MDT's Hutton Pit property. This would constitute a notable change in industrial use of land in the north Kalispell area.

Proceeding with the proposed land exchange would increase the amount of available commercial building sites in the immediate Kalispell area by 59.1 acres. On the nearby state school trust land, about 100 acres would be available for mixed commercial uses and some 200 acres available for mixed professional development. Combined, there would be nearly 360 acres of property in the U.S. Highway 93 and West Reserve Drive area made available for commercial and office type uses. Due to the availability of municipal services and infrastructure, this land is likely to be attractive for future development. A proposal to develop a high-tech business/industrial park on the state land has already been presented to the City Council. Given the Planned Unit Development Agreement between Pack and the City of Kalispell and the DNRC's MOU with local governments, the impacts of future development in the area will be mitigated.

**Traffic Impacts.** Development of a new commercial area and a multi-purpose coliseum as proposed for NUPAC's land near the intersection of U.S. Highway 93 and West Reserve Drive would generate additional traffic on the local street network for trips to/from the new commercial area from locations in Kalispell and the Flathead Valley. The level of expected traffic increases and required changes to the road system were examined in a traffic impact study prepared by Robert Peccia & Associates, Inc. in February 2000.

The study evaluated the operation of existing and proposed intersections on the road system and predicted the traffic impacts associated with peak hours of operation at the new commercial development based on the existing design concepts for the NUPAC property (See **FIGURE 4** and **APPENDIX D**). The study considered traffic operations associated with initial retail development (Phase I) and with the retail complex and multi-purpose coliseum in-place (Phase II). These impacts are summarized below:

**PHASE I Traffic Impacts:** Two proposed intersections, one with U.S. Highway 93 at the south end of the development and one with West Reserve Drive, would not function adequately without the provision of traffic signals and lane use modifications on existing roads. The developer has proposed to signalize these two intersections and make the necessary lane-use modifications on the adjacent roadways as part of Phase I of the project. Signalization and lane use modifications would produce minimal traffic delays at these locations.

The existing signalized intersection of U.S. Highway 93 and West Reserve Drive would continue to function acceptably under peak hour traffic conditions. The anticipated increase in traffic volume due to the retail development would increase the overall delay at the intersection slightly; however, the increased traffic would not cause a significant decrease in the overall level of service.

The proposed right-in/right-out only intersections on U.S. Highway 93 and on West Reserve Drive would be expected to function well and produce no serious traffic conflicts.

**PHASE II Traffic Impacts:** Phase II traffic impacts were analyzed assuming that a fully attended event at the coliseum occurred simultaneously with peak hour traffic on the local road system and when businesses in the development were active. The traffic impact analysis showed that all but one of the proposed intersections would function satisfactorily during peak hour conditions based on the proposed lane-use configurations. However, the U.S. Highway 93/West Reserve Drive intersection would experience some delays and congestion during periods when events at the proposed coliseum required patrons to arrive during the weekday evening peak hour. This situation would be not be common since evening events at the coliseum would likely begin after the evening peak hour has passed (i.e. after 6:30 p.m.).

It should be noted that Pack has prepared a Traffic Impact Study for the phased development of a commercial complex and multi-purpose coliseum on NUPAC land and MDT's Hutton Pit property. However, because this is a "preliminary" development proposal, MDT has not yet approved any changes to the design of U.S. Highway 93 or West Reserve Drive or changes to the operation of these traffic facilities. Prior to implementing any final development proposal for the property, Pack will have to obtain approvals from MDT's Traffic Engineers for any proposed access locations, traffic signal modifications or new installations, and changes in lane use configurations on U.S. Highway 93.

The DNRC plans for the school trust property (Section 36) located west of U.S. Highway 93 and south of West Reserve Drive call for no more than two controlled access locations on U.S. Highway 93. The DNRC's neighborhood plan also acknowledges that a traffic bypass for Kalispell linking U.S. Highway 2 West and U.S. Highway 93 North may be developed across the property. The proposed bypass would follow West Reserve Drive along the north edge of the property and connect with U.S. Highway 93 near the exiting NUPAC gravel pit. Although the bypass has been identified as a desirable addition to the local road system, there is no known effort underway at present to advance the construction of the facility. Without knowing when, if ever, such a bypass would be constructed, it is impossible to predict what impacts it might have on traffic. If a bypass is constructed, U.S. Highway 93 and West Reserve Drive will likely become one of the Kalispell area's major intersections.

Due to the timing (potentially decades long) and unknowns regarding the types and extent of commercial, professional and residential development on the state trust land near the intersection of U.S. Highway 93 and West Reserve Drive, the cumulative effects on traffic cannot be predicted with any certainty. It is expected that MDT's Traffic Engineers would require coordination between Pack's proposed development and future development on the state land for locating major intersections and any new traffic signals.

#### **Effects of Taking No Action:**

If this land exchange were not implemented, NUPAC and MDT would continue their operations on their respective properties. The land Pack proposes to exchange for the MDT's Hutton Pit site would continue to be used as vacant agricultural land. There would be no need to modify traffic operations or provide additional access onto U.S. Highway 93 since NUPAC's and MDT's facilities would continue to generate traffic at or near their present levels.

As indicated previously, major land use changes in the vicinity of U.S. Highway 93 and West Reserve Drive appear likely without undertaking the proposed land exchange due to the DNRC's planned development of state trust land. The staged development for the DNRC site would likely cause incremental increases in traffic on U.S. Highway 93, West Reserve Drive, Stillwater Road, and Four Mile Drive as businesses and other uses locate to the property and other nearby lands. The proposed development of the state land would also affect the location and extent of commercial/industrial activity in the Kalispell area.

**IMPACTS**

<b><u>HUMAN ENVIRONMENT</u></b> (Continued)	UNKNOWN	NO IMPACTS	MINOR IMPACTS:	POTENTIALLY SIGNIFICANT IMPACTS:	CAN IMPACTS BE MITIGATED	COMMENT INDEX
<b>10. PUBLIC SERVICES/ TAXES/UTILITIES</b>  Will the proposed action result in:  a. Have an effect upon or result in a need for new or altered governmental services in any of the following areas: fire or police protection, schools, parks/recreation facilities, roads or other public maintenance, water supply, sewer or septic systems, solid waste disposal, health or other governmental services?  b. Have an effect upon the local or state tax base and revenues?  c. Result in a need for new facilities or substantial alterations to any of the following utilities: electric power, natural gas, other fuel supply or distribution systems, or communications?  d. Result in increased use of any energy source?  e. Other: N/A			×			10a.  10b.  10c.  10d.

**COMMENTS FROM ABOVE:**

**10a.** The property to which MDT's maintenance/field engineering facilities would be relocated is presently undeveloped. MDT's operations on the site would require the installation of a new well and septic system.

**10b.** The exchange of property between MDT and Pack would have minimal direct effects on the local and state tax base and revenues. Property appraisals would establish the value of each property. Although similarly-sized and relatively close to one another, it is possible that the appraised value of the properties may differ. If this occurred, the taxable values of the properties may also vary. It is not expected that such variance would have more than a very minor impact on the tax base.

**10c.** Utilities (electrical power, natural gas or other fuel supply) and communications links would have to be extended into the Pack property to accommodate MDT's maintenance facilities and operations as well as onto NUPAC's land.

10d. Minor amounts of energy would be consumed during the construction of the proposed maintenance facility on the Pack property and the subsequent transfer of equipment and materials to the site.

**Secondary and Cumulative Effects on Public Services/Taxes/Utilities:**

**New or Altered Governmental Services.** The provision of new and/or altered governmental services would be necessary with the development proposed for NUPAC's land north of Kalispell. During the planning and design of the development, consideration would have to be given to identifying logical connections to Kalispell's existing water and sewer infrastructure. Similar infrastructure items would need to be constructed within the development site to accommodate planned commercial uses. Community fire and police protection, solid waste collection, utilities, communications links, and the local road system would also have to be extended into the development site. However, the costs of extending municipal water and sewer, installing a fire suppression system, and providing roads in the area would be primarily the developer's responsibility.

Inherent to the extension of municipal water and sanitary sewer and the provision of other community services to new developments on the north edge of Kalispell is the assumption that the City's existing systems and services are capable of accommodating the demands of such growth. The Planned Unit Development Agreement (page 14) indicates that no expansion of the sanitary sewer system is anticipated. However, if the City requires larger water and/or sewer lines than those installed by Pack, the City would pay for the costs associated with the increased utility main sizing to the NUPAC land. Pack is also required to pay connection fees for the City's Water and Sewer Utility. It is assumed that some portion of the connection fees are earmarked to fund improvements to the City's existing water and wastewater treatment facilities.

The City of Kalispell would be responsible for costs associated with providing police and fire protection to the NUPAC land, solid waste collection and disposal service, and for the future maintenance of main water and sewer lines after their installation and dedication to the public. According to the Planned Unit Development Agreement, maintenance responsibility for the development's internal road system would remain with Pack. However, the City would assume maintenance responsibility for the main access road proposed to run along the southerly and easterly boundary of the development.

**Local/State Tax Base and Revenues.** Future development on the NUPAC property would increase local and state tax base and revenues as businesses locate within the area. Property taxes would be paid on commercial buildings erected on the NUPAC land.

**New or Altered Utilities.** Privately-provided utilities (e.g. natural gas, electrical service, communications, etc.) would have to be extended in the area of NUPAC's proposed development to serve future occupants of the land. The costs associated with the provision of new utilities would be borne by the providers of such services.

**Energy.** Reclamation of NUPAC's sand and gravel operation and MDT's Hutton Pit property and the proposed construction of new businesses and a multi-purpose coliseum would consume energy through the operation of construction equipment. Sand, gravel, asphalt, concrete and other materials that are in abundant supply would be used to construct the new facilities on the NUPAC property.

Total energy consumption in the Kalispell area would increase slightly since the proposed commercial development in the U.S. Highway 93 and West Reserve Drive area would generate new vehicle trips within the community. The commercial development proposed for the NUPAC property and the nearby state school land may also have a minor beneficial effect on energy consumption if residents choose to shop locally rather than travel to other communities in or outside the Flathead Valley to shop.

**Effects of Taking No Action:**

Taking no action would not require the alteration or provision of governmental services or utilities, would not affect the local or state tax base, and would not change energy use.

It is foreseeable that future development of the State trust land in the U.S. Highway 93 and West Reserve Drive area could result in City water and sanitary sewer being extended irrespective of Pack's proposed development.

**IMPACTS****HUMAN ENVIRONMENT**  
(Continued)

	UNKNOWN	NO IMPACTS	MINOR IMPACTS:	POTENTIALLY SIGNIFICANT IMPACTS:	CAN IMPACTS BE MITIGATED	COMMENT INDEX
11. <u>AESTHETICS/RECREATION</u>  Will the proposed action result in:  a. Alteration of any scenic vista or creation of an aesthetically offensive site or effect that is open to public view?  b. Alteration of the aesthetic character of a community or neighborhood?  c. Alteration of the quality or quantity of recreational opportunities and settings?  d. Other: N/A			×	×		See Secondary and Cumulative Effects

**COMMENTS FROM ABOVE:**

None.

**Secondary and Cumulative Effects on Aesthetics/Recreation:**

The reclamation of NUPAC's present sand and gravel operation and adjoining MDT property would be necessary prior to the phased development of a commercial shopping center and/or coliseum complex. Some residents may consider the elimination of industrial operations in this area as the removal of an aesthetically offensive site, a positive environmental effect.

The appearance of this roadside area immediately north of Kalispell would be changed by the proposed future development of retail shopping areas and a multi-purpose coliseum and the nearby state trust land. The industrial nature of NUPAC's gravel pit and MDT's Hutton Pit facility would be replaced by a development comprised of buildings with a consistent architectural theme. The theme, identified in the Planned Unit Development Agreement as a "village concept," would include pedestrian-oriented development with sidewalks, landscaped boulevards, and bike paths. The Agreement outlines specific requirements for landscaping, signage, and lighting on the property. The DNRC's proposed development for the nearby state trust land would also produce changes in the appearance of the U.S. Highway 93 and West Reserve Drive area. The DNRC's plan for the state school land indicates their intent for future development to "maintain a pleasing highway corridor entrance to the City of Kalispell."

Similar visual changes are incrementally occurring throughout the Kalispell area and in other parts of the Flathead Valley. Appropriate building designs with common architectural themes, setbacks, signing, and landscaping

would substantially enhance the appearance of the NUPAC property along U.S. Highway 93.

The development of a multi-purpose coliseum on NUPAC's property could accommodate many sporting and cultural events that would expand recreational and entertainment opportunities in Kalispell and the Flathead Valley.

According the Planned Unit Development Agreement, Pack must install a bike path along U.S. Highway 93 and West Reserve Drive as well as a system of internal bike paths and sidewalks. These features would enable recreational walking and bicycling through the area and offer opportunities for future expansion of local pedestrian and bicyclist routes along these roadways.

**Effects of Taking No Action:**

Taking no action would not change the visual appearance of the project area in the vicinity of U.S. Highway 93 and West Reserve Drive as long as NUPAC's gravel pit and MDT's maintenance/field engineering facilities continue to operate. This area would continue to have an "industrial" appearance.

Regardless of the proposed land exchange, the appearance of the U.S. Highway 93 and West Reserve Drive area would change as development incrementally occurs on school trust land and possibly on other privately held lands.

**IMPACTS****HUMAN ENVIRONMENT**  
(Continued)**12. CULTURAL  
HISTORICAL  
RESOURCES**

Will the proposed action result in:

a. Destruction or alteration of any site, structure or object of prehistoric, historic, or paleontological importance?

b. Physical change that would affect unique cultural values?

c. Effects on existing religious or sacred uses of a site or area?

d. Other: N/A

	UNKNOWN	NO IMPACTS	MINOR IMPACTS:	POTENTIALLY SIGNIFICANT IMPACTS:	CAN IMPACTS BE MITIGATED	COMMENT INDEX
			×	×		12a.

**COMMENTS FROM ABOVE:**

**12a.** Contacts were made with the State Historic Preservation Office (SHPO) and the University of Montana Archaeological Records office during December 1999 regarding the presence of known cultural resources in the general areas that include MDT's Hutton Pit and the Pack property. It was learned that three previous cultural resource surveys have been conducted in the general area and there are no previously recorded historic or archaeological sites near either property.

Correspondence about cultural resources can be found in **APPENDIX C**. It should be noted that SHPO's letter dated December 21, 1999 highlighted a concern about the a historic site called Howe's Post. This property was identified based on a request for a file search in Section 29 of Township-29-North, Range-21-West instead of Section 19 where the Pack property is located. Follow-up contacts with SHPO made during January 2000 clarified the file search error and yielded information that no cultural sites are recorded in Section 19.

**Secondary and Cumulative Effects on Cultural/Historical Resources:**

In the absence of a cultural resources survey for NUPAC's land and MDT's Hutton Pit property, it is unknown whether future development on the properties would affect significant cultural or historical resources. However, given the disturbed nature of both properties, the likelihood of encountering cultural resources is judged as very low. The SHPO indicated in an email message received on January 24, 2000 that based on previous cultural resource surveys and the fact that no sites are known to exist in the area of these properties, the likelihood for affecting cultural properties is low.

**Effects of Taking No Action:**

Taking no action would not affect any known cultural sites or other historical resources.

**IMPACTS**

<u>SIGNIFICANCE CRITERIA</u>	UNKNOWN	NO IMPACTS	MINOR IMPACTS:	POTENTIALLY SIGNIFICANT IMPACTS:	CAN IMPACTS BE MITIGATED	COMMENT INDEX
<b>13. SUMMARY EVALUATION OF SIGNIFICANCE</b>  Will the proposed action, considered as a whole:  a. Have impacts that are individually limited, but cumulatively considerable? (A project or program may result in impacts on two or more separate resources which create a significant effect when considered together or in total.)  b. Involve potential risks or adverse effects which are uncertain but extremely hazardous if they were to occur?  c. Potentially conflict with the substantive requirements of any local, state, or federal law, regulation, standard or formal plan?  d. Establish a precedent or likelihood that future actions with significant environmental impacts will be proposed?  e. Generate substantial debate or controversy about the nature of the impacts that would be created?  f. Other: N/A				×	Yes	13a.

**COMMENTS FROM ABOVE:**

**13a. Have impacts that are individually limited, but cumulatively considerable? (A project or program may result in impacts on two or more separate resources which create a significant effect when considered together or in total.)**

The proposed land exchange by itself has limited direct impacts on the environment. However, the exchange of property would consolidate landholdings for Pack and make it possible for the NUPAC property (and MDT's

Hutton Pit property to be redeveloped with commercial land uses and a multi-purpose coliseum. Together with the DNRC's proposed development of some 480 acres of nearby school trust property, lands in the U.S. Highway 93 and West Reserve Drive area would be considerably changed from their predominantly agricultural and industrial use to commercial, professional, and residential uses. The changes in land use proposed for the U.S. Highway 93 and West Reserve Drive area would modify growth and travel patterns within the community by providing new sites for commercial and residential development where none existed previously and extending municipal water and sewer into previously unserved areas. The developments could also induce further land use changes on other nearby lands.

Such development would also have beneficial impact on the community, as the buildings on the site would generate new and greater tax revenues than with existing uses. The development of the properties along U.S. Highway 93 would also change the appearance of the northern entrance to the City of Kalispell. Landscaping, attractive building designs, cluster development instead of linear strip development, and the provision of pedestrian and bicycle facilities along the highway would enhance the appearance of the existing highway corridor. The NUPAC gravel pit would be removed in favor of more compatible land uses.

The significance of these cumulative effects would be limited by the terms of the Planned Unit Development Agreement between Pack and the City of Kalispell. The agreement was negotiated to ensure that the development occurred in a manner acceptable to both the landowner and the City. Likewise, the DNRC recently signed a Memorandum of Understanding (MOU) with the City and County that spells out the process the three entities will follow for the orderly transformation of school trust land into commercial and residential tracts. These agreements should help assure that growth in the U.S. Highway 93 and West Reserve Drive area occurs in a logical and manageable fashion. As such, the impacts would be minor, due to the mitigation required by these agreements.

**13d. Establish a precedent or likelihood that future actions with significant environmental impacts will be proposed?**

The proposed land exchange between MDT and Pack would eliminate one of the obstacles currently inhibiting the transformation of an industrial site into a large commercial development. Development concepts proposed for the NUPAC land and MDT's Hutton Pit property represent changes from the ways that these properties are presently used. At this time, the development of a commercial complex and multi-purpose coliseum on the north edge of Kalispell is not a certainty and there are no commitments "in-hand" from retailers willing to locate to the proposed new shopping area. The building of a multi-purpose coliseum on the property is also largely dependent upon the landowner's success in attracting tenants to the new site and selling commercial real estate within the development.

The proposed development of the NUPAC land has undergone public and agency review since 1998. The development of NUPAC's land would increase the amount of commercial property available in the community and require that municipal infrastructure (water, sewer, utilities, communications links) be extended into the subdivision, primarily at the landowner's expense. Retail shopping areas and a multi-purpose coliseum would generate additional traffic on U.S. Highway 93 north of Kalispell and cause changes to travel patterns in the community. Development approvals received to date suggest that these environmental effects are viewed as acceptable by local decision-makers, and such effects will be mitigated by the terms of the Planned Unit Development Agreement.

The development of the NUPAC site could also serve to generate other new commercial development proposals on nearby lands. However, new development proposals are induced by many factors and would be subject to existing master planning and zoning review processes. Local government has the ability to control how and where new commercial growth occurs in the Kalispell area. Local government also has the ability to make the final determination of whether the proposed development of the NUPAC land would likely result in unacceptable effects on the community.

The planning for commercial, professional, and residential uses on approximately 640 acres of state school trust property has been advanced by the DNRC independently of Pack's efforts to develop their gravel pit and MDT's Hutton Pit site. Implementation of the proposed land exchange would not change the DNRC's plans for the school trust property. The DNRC and State Land Board have recognized that the effects of developing the state property require that must be reviewed in accordance with the *MONTANA ENVIRONMENTAL POLICY ACT*.

As indicated previously, a lawsuit was filed on June 27, 2000 asking for a court order to stop the State Land Board and DNRC from developing the school trust property without first preparing an appropriate environmental impact study. The DNRC contends that its proposal to conduct site-specific environmental analyses for individual leases of the land would comply with the *MONTANA ENVIRONMENTAL POLICY ACT*.

**13e. Generate substantial debate or controversy about the nature of the impacts that would be created?**

The proposed development of the NUPAC land into a retail shopping area and coliseum has and continues to be a controversial issue in Kalispell. Development proposals for the NUPAC land (together with MDT's Hutton Pit property) were initially presented to the community in 1998. Numerous public meetings concerning the change in land use have been held before the Kalispell City-County Planning Board, the Kalispell City Council, and the Flathead County Commissioners. The pros and cons of the development proposal were debated and the general public was given the opportunity to comment prior to decision-making by these regulatory bodies. Ultimately, after all comments were considered, master plan amendments were adopted, the proposed property was rezoned to allow for general business uses, and a Planned Unit Development Agreement dictating how development should occur on the NUPAC land was signed by Pack and the City of Kalispell.

A degree of controversy regarding this proposal will likely always exist within some segments of the community. However, past actions by the City of Kalispell and Flathead County allowing the proposed development to advance suggest that the majority of those making decisions feel the proposed change in land use is acceptable and offers potential benefits to the community.



## SUMMARY OF ENVIRONMENTAL IMPACTS AND MITIGATION

ENVIRONMENTAL IMPACTS	MITIGATION
<p><b>Land Resources.</b> MDT's maintenance/field engineering facilities would be relocated to a site that is currently tilled agricultural land. The development of maintenance buildings, internal roads, and other features would require grading and compacting of the land.</p> <p>Commercial development on NUPAC's land and MDT's Hutton Pit site would require filling, compacting, and grading the existing gravel pit. Extensive areas of soils on these properties would be covered by pavement for circulation roads and parking areas and with buildings. This would make much of the property impervious to surface water.</p>	<p>The collection and treatment of surface water runoff from the developed site would be mitigated through the provisions of the Planned Unit Development Agreement between the City of Kalispell and Pack. See <b>APPENDIX D, page 16, Section 3.05 Storm Water.</b></p>
<p><b>Air Quality.</b> The proposed land exchange and the associated relocation of MDT's maintenance/field engineering operations to a nearby site would have negligible direct effects on local and regional air quality.</p> <p>Minor, localized short-term adverse impacts on air quality would occur due to the operation of heavy equipment and vehicles during construction activities at the site proposed for relocation of MDT's maintenance/field engineering operations. Similar impacts would occur during the reclamation of the NUPAC's gravel pit and during future site development for commercial uses on the property.</p>	<p>An Air Quality Construction and Demolition Permit must be obtained from the City of Kalispell prior to beginning any site grading work on the NUPAC site. See <b>APPENDIX D, page 16, Section 3.06 Site Grading.</b></p>
<p>The development of commercial uses and a multi-purpose coliseum on the NUPAC property and MDT's Hutton Pit land would indirectly affect air quality by attracting new vehicle trips to this portion of the Kalispell area and causing localized and minor increases in vehicle-generated pollutants.</p> <p>Conversion of the gravel pit with its extensive disturbed areas to a commercial development would provide some localized air quality benefits. Dust-producing activities at NUPAC's gravel pit (gravel crushing, heavy equipment operations, and truck traffic, etc.) would cease. The opportunity for windblown dust from the site would also be reduced since disturbed areas would be covered with landscaping or paving.</p>	<p>Adverse effects from these vehicle-generated emissions would be minimized with the installation and proper operation of traffic controls (signalization, turn lanes, etc.) to smooth traffic flows and limit delays and vehicle idling at intersections near the development.</p> <p>Future commercial development on the NUPAC property would provide driving surfaces and parking areas that can be swept clean of road sanding materials to minimize the potential for new contributions to PM-10 levels in the area.</p>

## ENVIRONMENTAL IMPACTS

## MITIGATION

**Surface Runoff/Drainage Patterns.** MDT's maintenance/field engineering facilities would be relocated to a site that is currently tilled agricultural land and highly permeable. The development of maintenance buildings, internal roads, and other features would increase the amount of impermeable area and cause minor changes to the amount of surface runoff from the property and surface drainage patterns.

Surface drainage patterns on the NUPAC and MDT's Hutton Pit properties would change since the existing gravel pit and other portions of the properties would be reclaimed and graded to allow future commercial site development. Much of the development site would be impermeable whereas the existing properties have few impermeable surfaces. This would change the amount of surface water runoff from the properties and change existing drainage patterns.

**Water Resources and Quality.** The proposed land exchange and the associated relocation of MDT's maintenance/field engineering operations may have a positive indirect effect on groundwater quality as a potential source of contamination at MDT's Hutton Pit site is removed.

An existing water right for a well on the Hutton Pit property would have to be transferred to Pack. A new well would have to be drilled and water rights applied for on the Pack land to be acquired by MDT through this proposed land exchange.

The proposed commercial development of the NUPAC gravel pit and MDT's Hutton Pit property would require the extension of municipal water and sanitary sewer services into this area. This could benefit the aquifer beneath this portion of the Flathead Valley by allowing other existing and planned developments in the area to use centralized water and sewer instead of individual septic systems and wells.

**Vegetation.** Relocating MDT's maintenance facilities to the site proposed by Pack would remove 8.946 acres of productive farmland from the Flathead Valley. Considered alone, this does not represent a notable impact. However, this and other future conversions of farmland will result in a notable loss of farmland in the immediate Kalispell area over the next few decades.

The design and layout of the new facilities would include provisions to adequately handle these minor changes in runoff and drainage patterns.

Commercial development on the properties would have to include design provisions to ensure storm water is adequately collected and transported to on-site detention areas. The collection and treatment of surface water runoff from the developed site would be mitigated through the provisions of the Planned Unit Development Agreement between the City of Kalispell and Pack. See **APPENDIX D, page 16, Section 3.05 Storm Water.**

MDT is presently investigating the extent of contamination at their facility and will implement cleanup activities during the summer of 2000.

Pack would be responsible for designing and installing water and sanitary sewer infrastructure on the NUPAC land and MDT's Hutton Pit property in accordance with the City of Kalispell's Standards for Design and Construction. See **APPENDIX D, page 14.**

None proposed.

**ENVIRONMENTAL IMPACTS****MITIGATION**

**Vegetation. (Continued)** New land disturbances offer the potential for the migration and establishment or spread of noxious weeds unless efforts are made to re-establish permanent desirable vegetation communities on areas disturbed by the construction.

The commercial development proposed for the NUPAC land and MDT's Hutton Pit property would provide new vegetation on an industrial site (gravel pit) that has little existing vegetation. The introduction of suitable vegetation (trees, shrubs, and grass) as landscaping would enhance the appearance of this area.

**Fish and Wildlife Resources.** The proposed action would not directly affect the threatened bald eagle or bull trout which could occur in the area. Bull trout in the Stillwater River could be affected by future commercial development of NUPAC's land if sediments from were transported to the river.

No other rare or sensitive species would be affected.

New land disturbances and construction activities may cause temporary displacement of or a loss of habitat for small non-game animals or birds that inhabit the properties.

Continued human development in the general project area and Flathead Valley would remove and/or degrade habitat for threatened or endangered species, sensitive species, and other wildlife.

**Noise Impacts.** Temporary and localized increases in noise would be expected during the construction activities required to ready the Pack property for MDT's maintenance operations. Likewise, noise would be generated during reclamation and subsequent development activities on Pack's property (NUPAC Sand and Gravel Company) and MDT's Hutton Pit.

Conversion of the NUPAC gravel pit and MDT's Hutton Pit property to commercial uses would be expected to result in decreased noise levels on the properties since existing noise associated with mining and crushing gravel, heavy equipment operating on the site, and trucks traveling to and from the industrial site would cease.

Development on the site where MDT's maintenance facilities would be relocated to would be subject to the provisions of the County Noxious Weed Management Act and other county noxious weed control provisions.

The Planned Unit Development Agreement between the City of Kalispell and Pack specifies that landscaping would be an integral part of the site's design. See APPENDIX D, pages 17 and 18, Section 3.08 Landscaping.

The use of measures to control erosion during the commercial development of NUPAC's land would minimize the potential for sediment to be transported to surface waters. As indicated previously, the Planned Unit Development Agreement specifies that storm water will not be retained, treated or discharged off-site. Consequently, impacts to bull trout and habitat for this threatened species would be negligible since surface runoff and sediments would not reach the Stillwater River.

None proposed.

## ENVIRONMENTAL IMPACTS

## MITIGATION

**Noise Impacts. (Continued)** The development of commercial uses on the Pack property (and MDT's Hutton Pit land) as well as the proposed development on the nearby school trust land would attract new vehicle trips adding to ambient noise levels along the U.S. Highway 93 and West Reserve Drive.

The increases in traffic-generated noise are viewed as minor since the types of development proposed are not noise sensitive land uses. Noise levels along the U.S. Highway 93 corridor are also expected to increase in the future due to "naturally" occurring traffic growth in the Kalispell area.

**Land Use Impacts.** The proposed relocation of MDT's maintenance/field engineering facilities would convert an agriculturally-used land to industrial property.

NUPAC's land and MDT's adjoining Hutton Pit property would be converted from industrial to commercial uses. Such a conversion would allow the properties to be used for a higher (and more profitable) purpose than mining gravel.

The conversion of NUPAC's property to sites for commercial uses along with the planned commercial, professional and residential development of school trust land immediately to the west would constitute a change in land use in the vicinity of U.S. Highway 93 and West Reserve Drive.

The availability of large tracts with municipal water and sewer service suitable for commercial, professional and residential buildings should be attractive to developers and could induce further growth on nearby lands. The full extent of any such speculative development is not reasonably foreseeable and may take decades.

Appropriate building setbacks and design, roadside grading, and landscaping of the property along the roadway would help attenuate some traffic-generated noise.

Development of the property must be done in accordance with the terms of a Planned Unit Development Agreement (see **APPENDIX D**) between Pack and the City of Kalispell. The Agreement essentially spells out what the developer intends to do on the property and how it would be done.

However, the Planned Unit Development Agreement between Pack and the City of Kalispell and the MOU between the DNRC, City, and Flathead County would help assure that growth occurs in a logical and manageable fashion. These agreements would also help assure that the adverse effects of such growth would be minor.

Future development on lands adjoining NUPAC's property or the school trust land would be subject to reviews and approvals by Flathead County and/or the City of Kalispell. Conditions imposed on future development by the City or County would help minimize any adverse effects like traffic impacts, the need for community services, and incompatible development patterns.

ENVIRONMENTAL IMPACTS	MITIGATION
<p><b>Hazardous Waste.</b> Site investigations revealed petroleum contaminated soil on a portion of MDT's Hutton Pit property. Soil tests showed an elevated concentration of nearly twice as high as the cleanup concentration allowed by the MDEQ for such contaminated soils. It was also reported that partially-filled drums of leaded paint are buried on the property although the number and condition of the drums is unknown.</p> <p>Other than the inherent risks associated with driving to or from the proposed commercial development, the proposed action would not create or release any other hazardous materials.</p>	<p>MDT is currently in the process of implementing cleanup activities on the Hutton Pit property. Cleanup activities should be completed during the summer of 2000.</p> <p>See also APPENDIX D, pages 5 and 6, Section 2.02 No Hazardous Substances.</p>
<p><b>Community Impacts.</b> The proposed land exchange would move MDT's maintenance/field engineering facilities to a new site would not result in any permanent increases in traffic on U.S. Highway 93. MDT employees may have to drive one mile further or one mile less on U.S. Highway 93 to access the new facility. Construction activities to prepare the Pack property for MDT's operations would cause short-term increases in vehicle trips on the highway and some adjoining roads.</p> <p>The proposed land exchange and subsequent development of NUPAC's land for commercial uses would have only minor indirect effects on the total population and growth rate of the Kalispell area. The anticipated development and related employment would not create a substantial demand for new housing.</p> <p>The proposed development on NUPAC's land and on MDT's Hutton Pit property would increase opportunities for new commercial establishments to locate in Kalispell. New businesses would create opportunities for employment and in turn, increase personal income and expenditures within the community.</p> <p>Proceeding with the proposed land exchange would increase the amount of available commercial building sites in the immediate Kalispell area by 59.1 acres. Due to the availability of municipal services and infrastructure, this land is likely to be attractive for future development.</p>	<p>The Planned Unit Development Agreement between Pack and the City of Kalispell was generally established to mitigate the impacts of future commercial development on NUPAC's land and MDT's Hutton Pit.</p>

ENVIRONMENTAL IMPACTS	MITIGATION
<p><b>Traffic Impacts.</b> Two proposed intersections, one with U.S. Highway 93 at the south end of NUPAC's proposed development and one with West Reserve Drive, would not function adequately without the provision of traffic signals and lane use modifications on existing roads.</p> <p>The existing signalized intersection of U.S. Highway 93 and West Reserve Drive would continue to function acceptably under peak hour traffic conditions.</p> <p>The anticipated increase in traffic volume due to the retail development would increase the overall delay at the intersection slightly; however, the increased traffic would not cause a significant decrease in the overall level of service.</p>	<p>The developer has proposed to pay for and install signals at the two intersections and make the necessary lane-use modifications on the adjacent roadways as part of the initial retail development phase of the project. Signalization and lane use modifications would produce minimal traffic delays at these locations. See <b>APPENDIX D, pages 8 and 9, Section 3.02 Access.</b></p> <p>Pack has prepared a Traffic Impact Study for the phased commercial development on NUPAC land and MDT's Hutton Pit property. However, because this is a "preliminary" development proposal, MDT has not yet approved any changes to the design of U.S. Highway 93 or West Reserve Drive or changes to the operation of these traffic facilities. Prior to implementing any <u>final</u> development proposal for the property, Pack will have to obtain approvals from MDT's Traffic Engineers for any proposed access locations, traffic signal modifications or new installations, and changes in lane use configurations on U.S. Highway 93.</p> <p>Scheduling events at the proposed coliseum to begin after the evening peak hour would mitigate this condition.</p>
<p>A preliminary traffic impact study suggests that the U.S. Highway 93/West Reserve Drive intersection would experience some delays and congestion if a fully attended event at the coliseum occurred simultaneously with weekday evening peak hour traffic.</p> <p>Due to the unknown timing (potentially decades long) and uncertainties about the types and extent of future development on the state trust land near the intersection of U.S. Highway 93 and West Reserve Drive, the cumulative effects on traffic cannot be predicted with any degree of accuracy. Such development would increase traffic on these roads, alter local travel patterns, and require modifications to existing traffic facilities.</p>	
<p><b>Public Services/Taxes/Utilities.</b> A new well, septic system, power and communications lines would have to be installed on the property to which MDT's maintenance/field engineering facilities would be relocated.</p>	<p>As a condition of the Agreement to exchange property, Pack must make the site ready and pay for the costs associated with relocating MDT's maintenance/field engineering facilities.</p>

**ENVIRONMENTAL IMPACTS****MITIGATION****Public Services/Taxes/Utilities. (Continued)**

Utilities (electrical power, natural gas or other fuel supply), municipal water and sewer, and communications links would have to be extended onto NUPAC's land to accommodate future commercial development.

The exchange of property between MDT and Pack would have minimal direct effects on the local and state tax base and revenues. Future development on the NUPAC property would increase local and state tax base and revenues as businesses locate within the area. Property taxes would be paid on commercial buildings erected on the NUPAC land.

Community fire and police protection, solid waste collection, utilities, communications links, and the local road system would also have to be extended into the development site.

The City of Kalispell would be responsible for costs associated with providing police and fire protection to the NUPAC land, solid waste collection and disposal service, and for the future maintenance of main water and sewer lines after their installation and dedication to the public. Similarly, the City would assume maintenance responsibility for the main access road proposed to run along the southerly and easterly boundary of the development.

**Aesthetics.** The elimination of industrial operations at NUPAC's gravel pit and on the adjoining MDT property may be viewed as a positive impact due the removal of aesthetically offensive sites.

The appearance of this roadside area immediately north of Kalispell would be changed by the proposed future development of retail shopping areas and a multi-purpose coliseum and the nearby state trust land. The industrial nature of NUPAC's gravel pit and MDT's Hutton Pit facility would be replaced by a development comprised of buildings with a consistent architectural theme.

The costs of extending municipal water and sewer, installing a fire suppression system, and providing roads in the area would be the developer's responsibility. See **APPENDIX D, pages 13, 14 and 17, Section 3.02**  
**Sewer and Water.** Pack is also required to pay connection fees for the City's Water and Sewer Utility.

The costs associated with the provision of new utilities would be borne by the providers of such services.

According to the Planned Unit Development Agreement, maintenance responsibility for the development's internal road system would remain with Pack.

Appropriate building designs with common architectural themes, setbacks, signing, and landscaping would substantially enhance the appearance of the NUPAC property along U.S. Highway 93. See **APPENDIX D, pages 6 and 7, Section 2.02.** The Planned Unit Development Agreement outlines specific requirements for landscaping, signage, and lighting on the property. See **APPENDIX D, page 17, 18, and 19 Section 3.08, 3.09, and 3.10.**

ENVIRONMENTAL IMPACTS	MITIGATION
<p><b>Recreation.</b> The development of a multi-purpose coliseum on NUPAC's property could accommodate many sporting and cultural events that would expand recreational and entertainment opportunities in Kalispell and the Flathead Valley.</p> <p>NUPAC's proposed development would be pedestrian-oriented and have separate bike paths along U.S. Highway 93 and West Reserve Drive. These features would enable recreational walking and bicycling through the area and offer opportunities for future expansion of local pedestrian and bicyclist routes along these roadways.</p>	See APPENDIX D, page 9, Section 3.03 Private Internal Roadways, Bike Paths, and Sidewalks and page 18, Section 3.09 Off-site Bike Paths.
<p><b>Cultural/Historical Resources.</b> Due to the disturbed nature of both properties involved in this land exchange, the likelihood of encountering cultural resources is judged as very low.</p>	.

## **PART II. ENVIRONMENTAL REVIEW (Continued)**

- 2. Description and analysis of reasonable alternatives (including the no action alternative) to the proposed action whenever alternatives are reasonably available and prudent to consider and a discussion of how the alternatives would be implemented:**

### **Alternative No. 1: No Action.**

Under this alternative, no land exchange would take place. MDT and Pack would retain ownership of their respective properties. MDT would continue to conduct maintenance and field engineering operations from its property and continue to store materials and equipment on the site. The parcel owned by Pack and proposed for exchange with MDT would likely remain vacant or it could be sold for other uses. The proposed development on the NUPAC land could not proceed as currently planned since MDT's Hutton Pit lies in the midst of the property. Continued use of MDT's Hutton Pit maintenance/field engineering facility would likely be incompatible with the type of commercial development proposed for the surrounding NUPAC area.

### **Alternative No. 2: Preferred Alternative, Land Exchange as Proposed.**

This alternative involves an exchange of property between MDT and a private landowner. Under the proposed exchange, MDT would trade ownership of an 8.88-acre parcel known as the Hutton Pit for title to an 8.946-acre tract currently owned by Pack. MDT's maintenance/field engineering facilities and operations would then be moved approximately one mile north to the newly acquired site. Pack would be financially responsible for making the new property suitable for MDT's operations and for moving equipment, storage tanks, and stockpiled materials to the site. Pack would also be responsible for all regulatory actions necessary to transfer MDT's maintenance/field engineering operations and facilities to a new site.

The proposed action is being advanced solely at the request of Pack since the exchange of property would allow the firm to consolidate landholdings in the vicinity of the NUPAC Sand and Gravel Company (a subsidiary of Pack) and develop the land for commercial uses. The phased development of a retail shopping complex and a multi-purpose domed coliseum has been proposed for this area. However, master planning and zoning designations for the property have been changed to allow B-2 commercial uses. The proposed land exchange would be accomplished according to the terms of an "Agreement to Exchange Real Estate" between MDT and Pack.

Subsequent development of the NUPAC property and the Hutton Pit site would occur after the present sand and gravel operations ceased and the gravel pit was reclaimed. Reclamation methods proposed for the gravel pit would be subject to approval by the Montana Department of Environmental Quality. Existing permanent structures and equipment would have to be removed and the site graded to accommodate new development. Pack's sand and gravel operations would be transferred to another existing location within the Kalispell area. The terms and conditions of the property's development have been outlined in a Planned Unit Development Agreement between Pack and the City of Kalispell.

**3. Evaluation and listing of mitigation, stipulation, or other control measures enforceable by the agency or another government agency:**

The existing Pack property adjacent to U.S. Highway 93 north of West Reserve Drive lies within Highway 93 North zoning district and is zoned SAG-10. This designation means the area is within a Suburban Agricultural zoning district and has a 10-acre minimum lot size requirement. The intent of the district is to provide a buffer between urban development to the south and agricultural uses in the vicinity of the Pack property. The proposed use of the land for a MDT maintenance facility is not listed as a permitted or conditionally permitted use in the SAG-10 district.

Section 76-2-402, M.C.A., requires that a public hearing be held by the Flathead County Board of Adjustment when a use not specifically allowed by the zoning regulations is proposed by a government agency. The Board of Adjustment has no power to deny the use proposed by government but serves to provide a public forum for comment on the proposed use. A public hearing must be held for this proposed change in land use within the Highway 93 North zoning district. A public hearing before the Board of Adjustment on this matter has not yet been scheduled.

A source of water and a septic system must be installed on the Pack property to accommodate MDT's maintenance facilities and operations. MDT's holds a Certificate of Water Right for a well on their existing Hutton Pit property. Because there is no well on the Pack property, it would be necessary for a new well to be drilled and for MDT's existing water right to be transferred to Pack. A septic system permit for on-site sewage disposal must also be obtained for the Pack property from the Flathead City-County Health Department.

As indicated in the comments attached to the Environmental Checklist, site investigations revealed that hazardous waste concerns exist on MDT's Hutton Pit property. Testing showed soil on a portion of the property has been contaminated by diesel fuel to a level requiring mitigation. Concern also exists that partially filled drums of leaded paint may be buried on the property although the number and condition of the drums is unknown. These hazardous waste concerns are presently being investigated by MDT and will be remediated as required.

The MDEQ is responsible for permitting the mining of gravel on NUPAC's land. The reclamation methods NUPAC proposes for the gravel pit must be reviewed and their Mined Land Reclamation Permit amended if the methods of reclamation vary from those originally specified. As part of the permit amendment process, NUPAC would have to provide detailed information to the MDEQ describing their proposed reclamation plan.

The Planned Unit Development Agreement between Pack and the City of Kalispell (see **APPENDIX D**) outlines the specifics of how the development of the NUPAC land would be accomplished. The Agreement also contains a detailed list of obligations Pack must perform. In essence, the Agreement is a formalized plan for mitigating the effects of the proposed development on NUPAC's land. The obligation to install the infrastructure improvements specified in the Agreement is secured by a performance bond, letter of credit, or the land itself. These financial securities are a guarantee that Pack intends to perform the improvements (and mitigating measures) listed in the Agreement.

## **PART III. NARRATIVE EVALUATION AND COMMENT**

The proposed land exchange has been requested by Pack and the firm would be the principal beneficiary of the transfer of property ownership. Pack would obtain an 8.88-acre parcel adjacent to their existing holdings that would provide them with land needed to advance a commercial development proposal in place of their NUPAC Sand and Gravel Company. The restoration of the NUPAC site and its potential development would result in a "higher and better" land use and businesses that located to the property would increase the tax base in the community. Pack's intention to implement the existing Planned Unit Development Agreement on the property also represents an orderly expansion of a large area within the City of Kalispell. Before Pack's proposed development can advance, the firm must first prove that ownership of MDT's Hutton Pit property has been received.

MDT's maintenance/field engineering operations would neither be facilitated nor hindered by the proposed land exchange. The transfer of MDT's operations to a new site would be done at Pack's expense although some minor costs may be incurred for MDT to plan for and direct the activities associated with the relocation of equipment and stockpiled materials. Under the terms of the agreement to exchange property between Pack and MDT, the party with the least valued tract would pay the difference in value between the tracts. MDT would incur some cost if the appraised value of the Hutton Pit property were lower than the parcel currently owned by Pack.

## **PART IV. CONCLUSION**

- 1. Based on the significance criteria evaluated in this EA, is an EIS required? If an EIS is not required, explain why the EA is the appropriate level of analysis for this proposed action:**

This Environmental Assessment examines the direct, indirect, and cumulative effects of the proposed exchange of property between MDT and Pack and Company. Based on the information provided and the evaluation completed for this proposed action, it is the preliminary determination of the MDT that an Environmental Assessment (EA) provides an adequate review for this proposal. This determination was made due to the minor direct effects associated with the proposed land exchange. The more notable secondary and cumulative effects of this proposed land exchange (the conversion of NUPAC's land from industrial to commercial uses and inducing new commercial development along the U.S. Highway 93 North corridor) have also been adequately considered.

The proposed development of the NUPAC land has undergone extensive public and agency review since 1998. Local government has approved master plan amendments, annexation requests, and zoning changes. These regulatory approvals have enabled development proposals for NUPAC's land to advance. A Planned Unit Development Agreement between Pack and the City of Kalispell executed in July 1999 is an additional assurance that future development on Pack's land would be done in a manner acceptable to the City and that the impacts would be mitigated. Past actions by the City of Kalispell and Flathead County allowing the proposed development to advance suggest that the majority of those making decisions feel the proposed change in land use is acceptable and offers potential benefits to the community.

Major land use changes in the vicinity of U.S. Highway 93 and West Reserve Drive would likely occur without undertaking the proposed land exchange and Pack's subsequent development of its property. As indicated previously in this EA, the Montana DNRC intends to develop some 480 acres of school trust property west of the NUPAC/Hutton Pit property over the next several decades. A "neighborhood plan" for the state property has already been approved by the Kalispell City-County Planning Board, the Kalispell City Council, and the Flathead County Commission. The DNRC has also signed a Memorandum of Understanding (MOU) with the City and County that spells out the process the three entities will follow for the orderly transformation of school trust land into commercial, professional, and residential tracts.

Measures to mitigate the effects of the proposed land exchange and the conversion of NUPAC's land to commercial uses are outlined in the Agreement to Exchange Property between MDT and Pack and in the Planned Unit Development Agreement between Pack and the City of Kalispell. Implementing these measures would adequately mitigate the consequences of the proposed action to below a level of significance warranting the preparation of an EIS.

This EA will be available for public review and comment and if any significant impacts are identified or raised during the review period, they will be evaluated to determine if an Environmental Impact Statement (EIS) is warranted.

**2. Describe the level of public involvement for this project if any and, given the complexity and the seriousness of the environmental issues associated with the proposed action, is the level of public involvement appropriate under the circumstances?**

A news article announcing the signing of the agreement to exchange property between MDT and Pack was published in the March 12, 2000 edition of the *Daily InterLake*. The article described the basic terms of the agreement and provided a historical overview of development proposals for the NUPAC property. A reprint of the article from the *Daily InterLake*'s website is attached.

In accordance with ARM 18.2.240, an opportunity for public review and comment on this EA will be afforded since impacts that might otherwise be deemed significant are mitigated in the proposed action or by controls imposed by the City of Kalispell and other agencies. A notice advising the public of the availability of this EA was published in the July 21, 2000 edition of the *Daily InterLake*. The notice described the proposed land exchange and requested comments from the public. A copy of the notice of availability can be found in **APPENDIX E**.

A public hearing must also be held before the Flathead County Board of Adjustment regarding the proposed relocation of MDT's maintenance facilities to the Pack property. The Pack property is located in the Highway 93 North Zoning District and is zoned SAG-10. Uses like the MDT maintenance facility are not a permitted in this zoning district. Although governmental agencies like MDT are exempt from zoning regulations according to Section 76-2-402, M.C.A., it will be necessary for a public hearing to be held before the County Board of Adjustment to obtain public comment on this proposed use. To date, this hearing has not yet been held.

Past newspaper articles concerning the proposed commercial development on NUPAC's land and on the nearby school trust property were reviewed during the preparation of this EA. Based on

this review, it is believed that some degree of controversy regarding this proposal and other large commercial development proposals will always exist within the community.

**3. Duration of comment period if any:**

This Environmental Assessment will be available for a 30-day comment period beginning on July 21, 2000. **Comments on the EA will be received through August 21, 2000.** All written comments received on the proposed action will be considered, and a Decision Notice will be issued.

**4. Name, title, address and phone number of the Person Responsible for Preparing the EA:**

Daniel M. Norderud, AICP  
Environmental Studies Division Manager  
Robert Peccia & Associates, Inc.  
P.O. Box 5653  
Helena, MT 59604  
Phone (406) 447-5000  
E-mail [dan@rpa-hln.com](mailto:dan@rpa-hln.com)

Phase I Environmental Investigation Report for hazardous materials prepared in support of EA by:

Roger A. Noble, P.G., Project Manager  
Land & Water Consulting, Inc.  
221 Parkway Drive  
P.O. Box 8027  
Kalispell, MT 59904  
Phone (406) 257-7200  
E-mail [info@landandwater.net](mailto:info@landandwater.net)

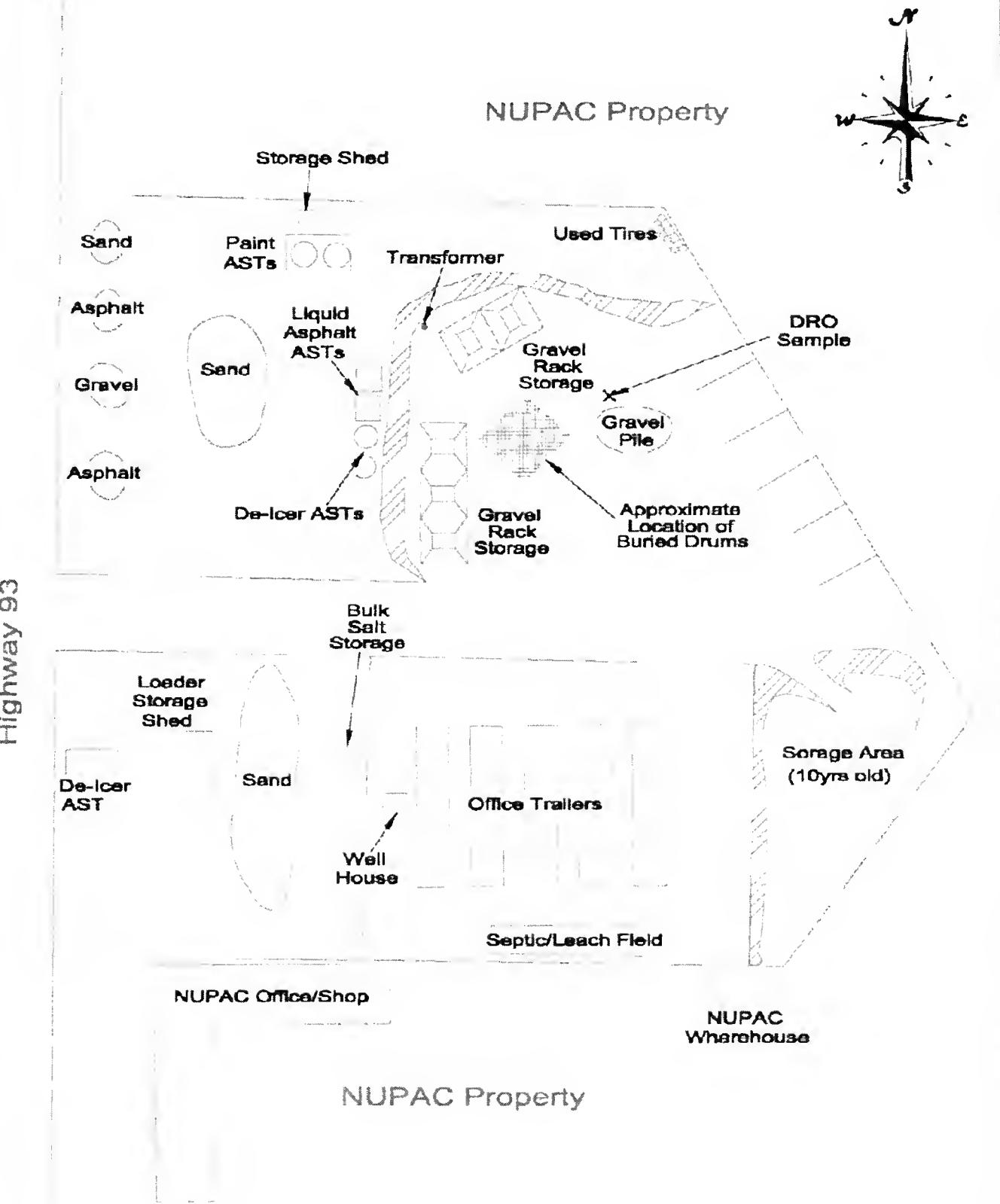


*MDT - Pack and Company Land Exchange  
Environmental Review*

**APPENDIX A: MAPS AND PHOTOS  
OF AFFECTED PROPERTIES**



Highway 93



**NUPAC**  
Phase I E.A.  
Figure 3. Site Use Map  
MDT Hutton Pit  
799-085

687.dwg



Scale: 1" = 120'  
Project Manager: R. Noble Draftsman: J.S.

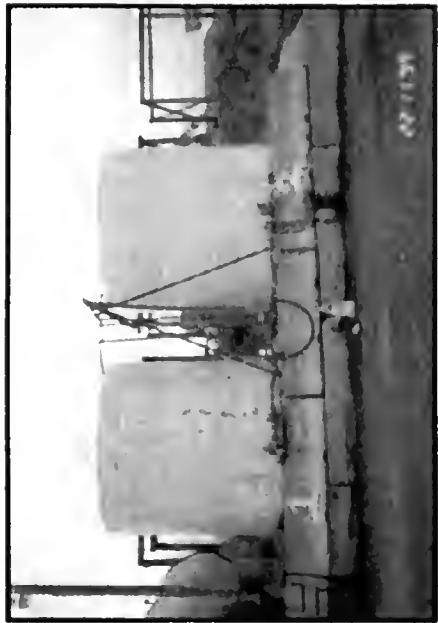
1-12-00

LAND & WATER CONSULTING, INC.  
(406) 257-7200 P.O. Box 6027  
(406) 257-7205 FAX Kalispell, MT 59904

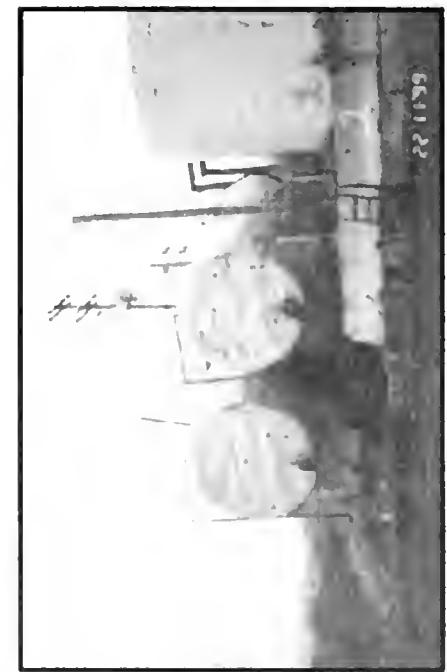




**Photograph No. 1:** View of one above-ground storage tank containing stripping paint



**Photograph No. 2:** View of storage tanks containing de-icing fluid



**Photograph No. 3:** White tanks contain emulsified asphalt, and are located immediately north of the de-icing fluid tanks



**Photograph No. 4:** View of de-icing fluid tank located near the entrance of the MDI facility





**Photograph No. 10:** Scrap metal is temporarily stored on-site, and periodically hauled away



**Photograph No. 9:** View looking west of gravel-racks are stored near the eastern edge of the property. De-icer and emulsified asphalt storage tanks can be seen in the background. Buried drums with leaded paint are located in this vicinity



**Photograph No. 12:** Small sand and asphalt piles located along western edge of facility



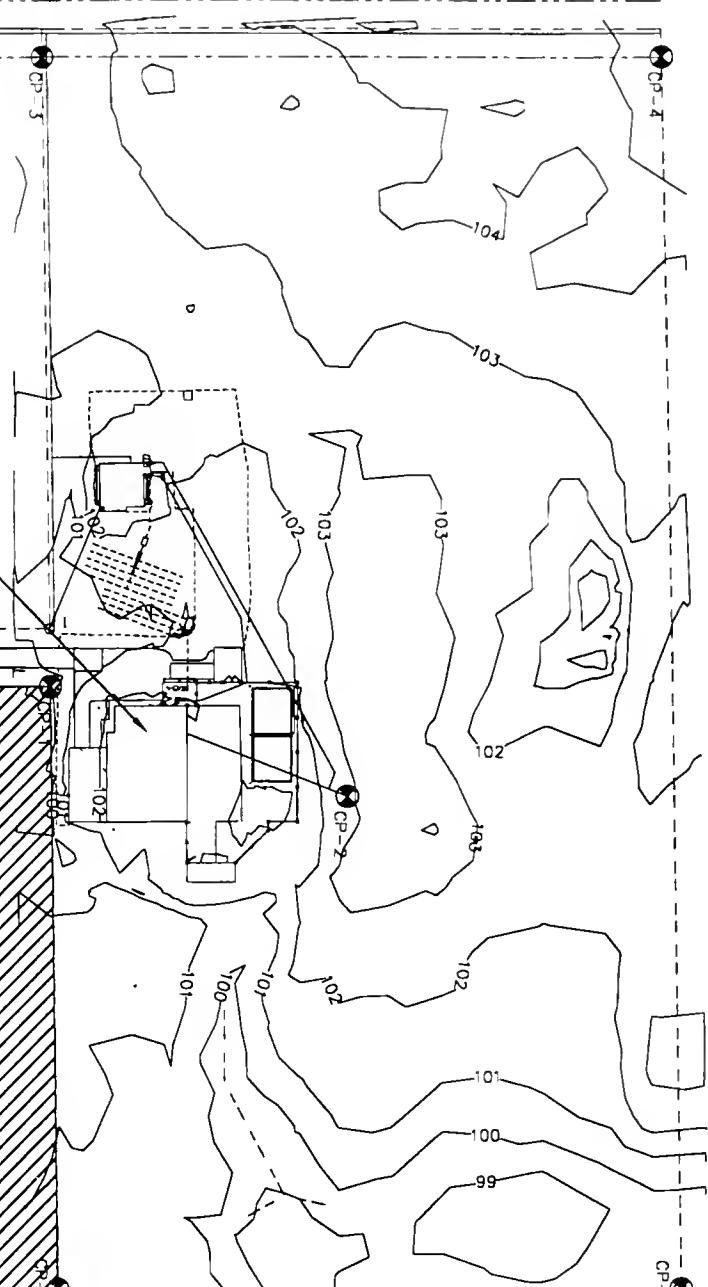
**Photograph No. 11:** Storage area located at southeastern corner of property. NI-PA-C facilities are present in the background



US Highway 93

**National Guard Armory**

**Pack & Company**  
**2G**



**Existing Site Plan**





**Photograph No. 1:** View looking northeast, of the Pack and Company property. The Army National Guard Armory can be seen in the background. The subject property consists of a tilled field.



**Photograph No. 2:** View of subject property looking north. Highway 93 North parallels the property.



*MDT - Pack and Company Land Exchange  
Environmental Review*

***APPENDIX B: MDT - PACK AGREEMENT TO  
EXCHANGE REAL ESTATE***



## AGREEMENT TO EXCHANGE REAL ESTATE

THIS AGREEMENT is entered into as of the 30<sup>th</sup> day of March, 2000, between Pack and Company, a Montana corporation ("Pack") and the Montana Department of Transportation, an agency of the State of Montana ("MDT").

### RECITALS

Pack owns land in the vicinity of 2355 Highway 93 North, Kalispell, Montana and desires to develop it.

Pack wishes to acquire for the purpose of development, a parcel now owned by MDT (identified herein as "MDT Land"), which MDT currently uses for staging of maintenance materials and equipment as well as field engineering operations.

MDT is willing to cooperate with the redevelopment of the area which includes MDT property.

MDT is only willing to relinquish the MDT Land to Pack in exchange for other nearby suitable land which MDT can use for the same purposes as the MDT Land.

Pack has entered into a Contract for Deed for certain land (identified herein as "Tract 2") which MDT is willing to exchange for the MDT Land, subject to the terms set out in this agreement.

Both parties agree that the exchange is based on the "Appraised Value" of both tracts as outlined in the procedures in the Uniform Standards of Professional Appraisal Practice (USPAP). The party with the least valuable tract of land will pay any difference in those values in cash at the time of closing.

NOW THEREFORE, in consideration of the premises and the reciprocal promises of the parties hereto, the parties agree as follows:

**1. Description of MDT Land.** The real property known as the Hutton Pit and consisting of 8.88 acres, legally described as follows:

Parcel 2, Assessors Tract 3A, COS #12230, Flathead County, Montana ("MDT Land").

**2. Description of Tract 2.** The real property consisting of 8.946 acres, legally described as follows:

Tract 2, COS #8673, Flathead County, Montana ("Tract 2").

**3. Exchange of Properties.** Pack hereby agrees to transfer and convey Tract 2 to MDT in consideration of and in exchange for the transfer and conveyance of the MDT Land by MDT to Pack, all in accordance with the terms of this agreement.

**4. Contingencies for the Benefits of MDT.** The obligations of MDT under this Agreement are contingent upon each of the items set forth in this Section 4 being true or having been accepted by MDT on or before the Closing Date. If any contingency has not been satisfied on or before the Closing Date, then MDT at its option may terminate this Agreement by delivery of written notice from MDT to Pack of its decision not to proceed. All contingencies in this Section 4 are for the benefit of MDT and may be waived by MDT.

**A. Title.** Title shall have been found acceptable, or been made acceptable, in accordance with the requirements and term of Section 7A below.

**B. Performance of Pack Obligations.** Pack shall have performed all of the obligations required to be performed by Pack under this Agreement, as and when required by this Agreement. Included within the obligations of Pack under this Agreement shall be the following: (i) Pack shall allow MDT, and MDT's agents access to Tract 2 without charge and at all reasonable times for the purpose of MDT's investigation. It is agreed by both parties that this land exchange is for the sole benefit of Pack, and no benefit will be derived by MDT; therefore, all costs and regulatory burden associated with this exchange will be borne by Pack. This will include the Environmental Documentation for MEPA and if necessary, NEPA requirements, surveys, testing and investigations for MDT Land and Tract 2. MDT shall have until the Closing Date, in MDT's sole and absolute discretion, based on inspections, examinations, studies, tests (including environmental review, and legal compliance surveys and reviews) to determine if condition and/or suitability of Tract 2 are acceptable to MDT

**C. Environmental.** Pack shall provide at its expense an environmental study of Tract 2 in the form requested in writing by MDT. MDT shall in its sole discretion determine if Tract 2 is in satisfactory condition. MDT may base its decision on the results of studies and tests in addition to the study.

**D. Engineering Reports.** Pack shall deliver to MDT as soon as practical after execution and delivery of this Agreement, copies of all engineering information, surveys and reports, if any, in Pack's possession or within Pack's control.

**E. Government Approvals.** All governmental approvals necessary, in MDT's sole discretion, for MDT's development of Tract 2, including rezoning, shall have been received. The exchange will not be final until there is complete compliance with MEPA (Montana Environmental Policy Act) and NEPA (National Environmental Policy Act) as required.

**F. Value of Land Parcels.** Appraisals of both tracts of land must be completed in accordance with the USPAP appraisal techniques and will be reviewed and approved by the MDT Right-of-Way Review Appraisal Section. The party with the least valued tract will pay any difference in value between the two tracts of land in cash at the time of closing.

**G. Development Area.** Pack shall provide to MDT a copy of the Planned Unit Development Agreement executed by Pack and the City of Kalispell on July 27, 1999, which agreement provides parameters for the development of Pack's property that borders the MDT Land, including development of a domed stadium.

**5. Contingencies for the Benefit of Pack.** The obligations of Pack under this Agreement are contingent upon each of the items set forth in this Section 5 being true or having been accepted by Pack on or before Closing Date. If any contingency has not been satisfied on or before the Closing Date, then Pack at its option may terminate this Agreement by delivery of written notice from Pack to MDT of its decision not to proceed. All contingencies in this Section 5 are for the benefit of Pack and may be waived by Pack.

**A. Title.** Title shall have been found acceptable, or been made acceptable, in accordance with the requirements and terms of Section 7A below.

**B. Performance of MDT Obligations.** MDT shall have performed all of the obligations required to be performed by MDT under this Agreement, as and when required by this Agreement. Included within the obligations of MDT under this Agreement shall be the following: (i) MDT shall allow Pack, and Pack's agents, access to the MDT Land without charge and at all reasonable times for the purpose of Pack's investigation and testing same. Pack shall pay all costs and expenses of investigation and testing undertaken by it and shall hold MDT and the MDT Land harmless from all costs and liabilities relating to Pack's activities. Pack shall have until the Closing Date, in Pack's sole and absolute discretion, based on inspections, examinations, studies, tests (including environmental review, and legal compliance surveys and reviews) to determine if condition and/or suitability of the MDT Land are acceptable to Pack.

**C. Environmental.** Pack shall provide at its expense an Environmental Study of the MDT Land and Pack shall in its sole discretion on or before the Closing Date determine that the MDT Land is in satisfactory condition. Pack may base its decision on the results of studies and tests in addition to the Environmental Study.

**D. Engineering Reports.** MDT shall deliver to Pack as soon as practical after execution and delivery of this Agreement, copies of all engineering information, surveys and reports in MDT's possession or within MDT's control.

**E. Development Agreement.** Pack and the City shall have entered into a Development Agreement including the MDT Land satisfactory to Pack, in Pack's sole discretion, including among other issues, Pack's obligations with respect to extensions of sewer, water and roadways.

**6. Cancellation.** If any of either party's contingencies have not been satisfied, then this Agreement may be terminated, by written notice to the other party. Such notice of termination may be given at any time on or before the Closing Date. Changes or improvements to MDT Land or Tract 2 should not begin until after the Closing Date. Absent timely termination in accordance with this Section, the contingencies shall be deemed waived. If, after an Environmental Assessment is performed, an Environmental Impact Statement must be performed, then this Agreement may be terminated by Pack, by written notice to MDT. Upon termination, as provided in this paragraph, neither party will have any further rights or obligations regarding this Agreement or either Property.

## 7. Provisions which apply to both MDT Land and Tract 2.

A. **Title Examination.** Each party shall, unless noted otherwise, within 20 (twenty) days after the date this Agreement has been signed by Pack and MDT, furnish the following (collectively, "Title Evidence") to the other party:

(i) Each party shall furnish a title commitment for an ALTA Owner's Policy of Title Insurance insuring title to the relevant property subject only to those encumbrances acceptable to the other party. Each party shall have 20 days after receipt of a title insurance commitment to object, in writing, to any exceptions described therein. If no objection is made within the time allowed, each party shall be deemed to have accepted the title commitment. If either party objects to any exception, the other party shall have 60 days to remove the exception. If they are unable to remove the exception or make it otherwise acceptable, either party may withdraw from this Agreement, in which case it shall be of no further force and effect.

(ii) A survey prepared by a registered land surveyor licensed in the State of Montana showing the relevant property and location of all buildings and easements thereon. The survey shall locate all wells and shall be prepared in accordance with the requirements of Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys (Class A Urban) (1992) including items to Table 3. MDT has a survey of its site which is available for consideration upon request. Any additional survey of the MDT Land will be at Pack's expense.

(iii) A report of UCC Searches made of the Uniform Commercial Code Records of the Secretary of State of Montana, made by said Secretary of State, or by a search firm acceptable to other party, showing no UCC filings regarding any of the relevant property at Pack's expense.

B. **Representations and Warranties.** Each party represents and warrants to the other party as set forth herein. Each of the representations and warranties herein contained shall survive the Closing. Each party will indemnify the other party, its successors and assigns, harmless from, any expenses or damages, including reasonable attorneys' fees, that the other party incurs because of the breach of any of the representations and warranties, whether such breach is discovered before or after Closing. (a) **Environmental Laws.** With the exception of substances which may be contained in drum containers that are possibly buried under the MDT Land, which substances are not presently known and identified, to the best knowledge of each party, no toxic or hazardous substances or wastes, pollutants or contaminants (including, without limitation, asbestos, urea formaldehyde, the group of organic compounds known as polychlorinated biphenyl, and hazardous substances as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. 59601-9657, (as amended) (collectively, "Hazardous Substances") have been generated, treated, released or disposed of, nor has any activity been undertaken on said party's Property that would cause or contribute to (i) such Property to become a treatment, storage or disposal facility within the meaning of, or otherwise bring such Property within the meaning of, the Resource Conservation and Recovery Act of 1976 ("RCRA"), 42 U.S.C. 6901 et. seq., or any similar state law or local ordinance, (ii) a release or threatened release of toxic or hazardous wastes or substances, pollutants or contaminants, from such Property within the meaning of, or otherwise bring such Property within the ambit of CERCLA, or any similar state law or ordinance, or (iii)

the discharge of pollutants or effluents into any water source or system, the dredging or filling of any waters or the discharge into air of any emissions, that would require a permit under the Federal Waste Pollution Control Act, 33 U.S.C. 1251, or the Clean Air Act, 42 U.S.C. 7401., or any similar state law or local ordinance. With the exception of substances which may be contained in drum containers that are possibly buried under the MDT Land, which substances are not presently known and identified, to the best knowledge of each party, there are no substances or conditions in or on such party's Property that may support a claim or cause of action under RCRA, CERCLA or any other federal, state or local environmental statutes, regulations, ordinances or other environmental regulatory requirements. No part of such Property is a "Wetland" as defined by any Federal, State or local law, nor is any of such Property located in a flood plain. Each party has disclosed to other party all environmental reports and studies with respect to such Property which are in said party's possession; (b) Proceeding. There is no such action, litigation, investigation, condemnation or proceeding of any kind pending or, to the best knowledge of each party, threatened against such party or any portion of such party's Property with respect to such party's Property; and (c) Storage Tanks. There are above ground fuel tanks located on the MDT's Land, and MDT has no knowledge of leaks from these tanks, and believes them to conform to all State and local laws governing their use and storage. There are also underground storage tanks on the MDT Land; after acceptance of this agreement, Pack may obtain permits to review, and remove the underground tanks at their expense. MDT will remediate any leakage from these tanks. To the best knowledge of Pack, there are no underground or above ground tanks on Tract 2. (d) Drum Containers. To the extent that drum containers have been buried and are located on the MDT Land, MDT has no knowledge of leaks from these containers, and believes them to conform to all state and local laws governing their use and storage. After acceptance of this agreement, Pack may obtain permits, if necessary, to review and remove the drum containers at its expense. MDT will be solely responsible for remediations of any leakage or ground or water contamination from these buried drum containers. MDT will pay for all costs of disposing of the buried drum containers and their contents. Nothing herein shall prevent MDT conducting an investigation of the location and extent of said barrels, or beginning the appropriate remediation, if necessary, of any contaminants which such barrels may contain. Such remediation shall be done pursuant to the appropriate supervision of the federal or state agency with such authority. (e) Taxes. MDT represents that the MDT Land in not now subject to real estate taxes, and that there are no special assessments levied or pending against the MDT Land. MDT will not complete the exchange unless all taxes and special assessments are paid in full on Tract 2. No other warranties, verbal or written, are given by either party, and this document constitutes the entire agreement between the parties relating to the Property.

**8. Relocation Expenses.** As an integral part of the consideration for this exchange of properties, Pack will be solely responsible for the contracting, administration and coordination along with payment of same for relocating facilities, fixtures and personal property from the MDT Land to Tract 2. The duties and tasks assigned to Pack in this relocation include moving and replacing all current buildings and associated infrastructure, including materials and material storage facilities, racks, tanks, fencing, office trailers, pads, power, septic, phones, computer line connections, radio and water along with any associated incidentals, such relocation to be done at the satisfaction of MDT and at Pack's expense.

**9. Closing.** The closing of the exchange contemplated by this Agreement (the "Closing") shall occur as mutually agreed upon by the parties hereto, but will not occur until after MEPA/NEPA requirements have been completed to MDT's satisfaction and all

contingencies described herein have been satisfied and nothing further needs to be done by either party pursuant to this Agreement, and shall take place at the offices of such title company ("Title") as the parties shall agree upon. Each party agrees to deliver possession of the respective Property to the other party on the Closing Date if all contingencies described herein have been satisfied.

**10. Closing Documents.** On the Closing Date, each party shall execute and/or deliver to the other party the following, all forms reasonably satisfactory to the other party: (a) Warranty Deed (MDT provides Grant or Quit Claim Deed); (b) Title Insurance Policy; (c) Any customary and normal affidavit of Pack regarding no judgments, bankruptcies or liens; (d) Original Permits, Plans and Surveys; (e) Documents regarding property title, including any abstracts or other certificates evidencing title; (f) any customary documents regarding locations of wells and tanks; (g) Opinion from Pack's counsel (dated as of the Closing Date) that Pack has the requisite power and authority to enter into and perform this Agreement, and that the Closing Documents have been duly authorized by all necessary parties on the part of Pack, that the execution, delivery and organizational documents, or any judgment, order or decree of any court enforceable in accordance with their terms; and (h) Other documents reasonably determined by either party and/or Title to be necessary to transfer the Properties free and clear of all encumbrances.

**11. Closing Prorations.** The intent of this Agreement is that, except as explicitly otherwise provided in this Agreement, MDT will incur no expense in connection with the exchange of the Properties and the relocation of its facilities to Tract 2. The parties agree to the following prorations and allocation of costs regarding this Agreement: (a) Title Insurance and Closing Fee: Pack will pay all costs of the Title Evidence (as defined in Paragraph 7A above) and each party shall pay for an owner's policy for the land to be acquired by it, if it chooses to obtain such policy. Pack will pay the entire reasonable and customary closing fee or charge imposed by any closing agent designated by Title; (b) Taxes: Pack shall pay all taxes, if any, imposed on the deeds or as a result of the recording of the deeds; (c) Real Estate Taxes and Special Assessments: Pack shall pay real estate taxes levied on Tract 2 payable in 1999, shall pay all real estate taxes and special assessments on said land due and payable prior to 1999, and shall pay the entire balance of all outstanding assessed or levied special assessments on said land; (d) Other Charges: Utilities for each Property will be prorated as of Closing; (e) Recording Costs: Each party will pay the normal and customary costs of recording all documents necessary to place record title in the condition warranted by such party in this Agreement, and Pack shall pay the cost of recording the deeds exchanged by the parties; (g) Attorney's Fees: Each of the parties will pay the cost of its own attorneys fees, except that Pack will prepare the Closing Documents for review by MDT, and except that a party defaulting under this Agreement or any closing document will pay the reasonable attorney fees and court costs incurred by the nondefaulting party to enforce its rights regarding such default; (h) Third Party Fees: Pack will pay the reasonable fees of the surveyors, environmental engineers and appraisers whose services are contemplated by this Agreement.

**12. Brokers.** MDT and Pack represent and warrant to each other that they have dealt with no brokers, finders or the like in connection with this exchange transaction. The parties agree to indemnify each other and to hold each other harmless against all claims, damages, costs or expenses of or for any such fees or commissions resulting from their actions or agreements regarding the execution or performance of this Agreement, and will pay all costs of defending

any action or lawsuit brought to recover any such fees or commissions incurred by the other party, including reasonable attorney's fees.

**13. Notices.** Any notice required or permitted to be given by either party upon the other is given in accordance with this Agreement if it is mailed in a sealed wrapper by United States registered or certified mail, return receipt requested, postage prepaid; or if deposited cost paid with a nationally recognized, reputable overnight courier, properly addressed as follows:

If to MDT: Montana Department of Transportation  
P.O. Box 7308  
Kalispell, MT 59904-0308  
Attn: Stephen Iterzog

If to Pack: Pack and Company  
2355 Highway 93 North  
Kalispell, MT 59901

Notices shall be deemed effective on the earlier of the date of receipt or the date of deposit as aforesaid; provided, however, that if notice is given by deposit, that the time for response to any notice by the other party shall commence to run one business day after any such deposit. Any party may change its address for the service of notice by giving written notice of such change to the other party in a manner above specified, 10 days prior to the effective date of such change.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

Approved for Legal Sufficiency

Date \_\_\_\_\_

By Syle Manley  
Montana Department of Transportation

MONTANA DEPARTMENT OF TRANSPORTATION

By Marvin R. By

Its Director

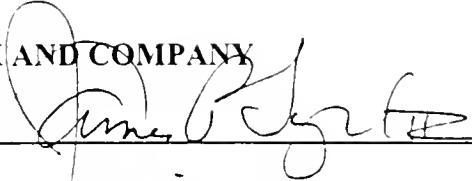
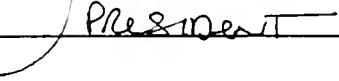
And \_\_\_\_\_

Its \_\_\_\_\_

PACK AND COMPANY

By

Its

*MDT - Pack and Company Land Exchange  
Environmental Review*

***APPENDIX C: CORRESPONDENCE  
PERTINENT TO THE EA***



# State Historic Preservation Office

## Montana Historical Society

1410 8th Avenue • PO Box 201202 • Helena, MT 59620-1202 • (406) 444-7715 • FAX (406) 444-6575

December 21, 1999

Daniel M. Norderud  
Robert Peccia & Associates  
PO Box 5653  
Helena, MT 59604

RE: MDT/NUPAC Land Exchange Sec 29 & 31 T29N R21W FH Co.  
SHPO Project #: 99121404

Dear Mr. Norderud:

I have conducted a cultural resource file search for the above cited project area. Currently, there is one previously recorded historic site in the designated search locale. The site 24FH354 is Howe's Post, which is a historic fur trade fort that dates to the early 1800's. The site is located in section 29 of the project location. If you wish to obtain further information on this site you may contact the University of Montana Archaeological Records Office at (406)-243-5525.

In addition to the site there have been three previous cultural resource inventories in the area. William Babcock did a Cultural Resource Inventory West Reserve Drive, Kalispell in August of 1981. David Grant did a Fiber Optic Line Port of Piegan, Alberta to Thompson Falls: Construction of Monitoring Report in November of 1994. Dennis E. Lewarch did the Montana-Canada Fiber Optic Line Glacier, Flathead, and Sanders Counties, Montana in November of 1993. If you wish to obtain further information on these sites you may contact me at the number listed below.

We feel that based on the presence of potentially significant properties in the area that there is the potential for cultural sites to be impacted by this undertaking. Therefore we would recommend that a cultural resource inventory be contacted in order to determine whether or not existing sites will be impacted or if new ones are present. Thank you for consulting with us.

If you have any further questions or comments please feel free to contact me at (406)-444- 7767 or by e-mail at pmelton@state.mt.us.

Sincerely,

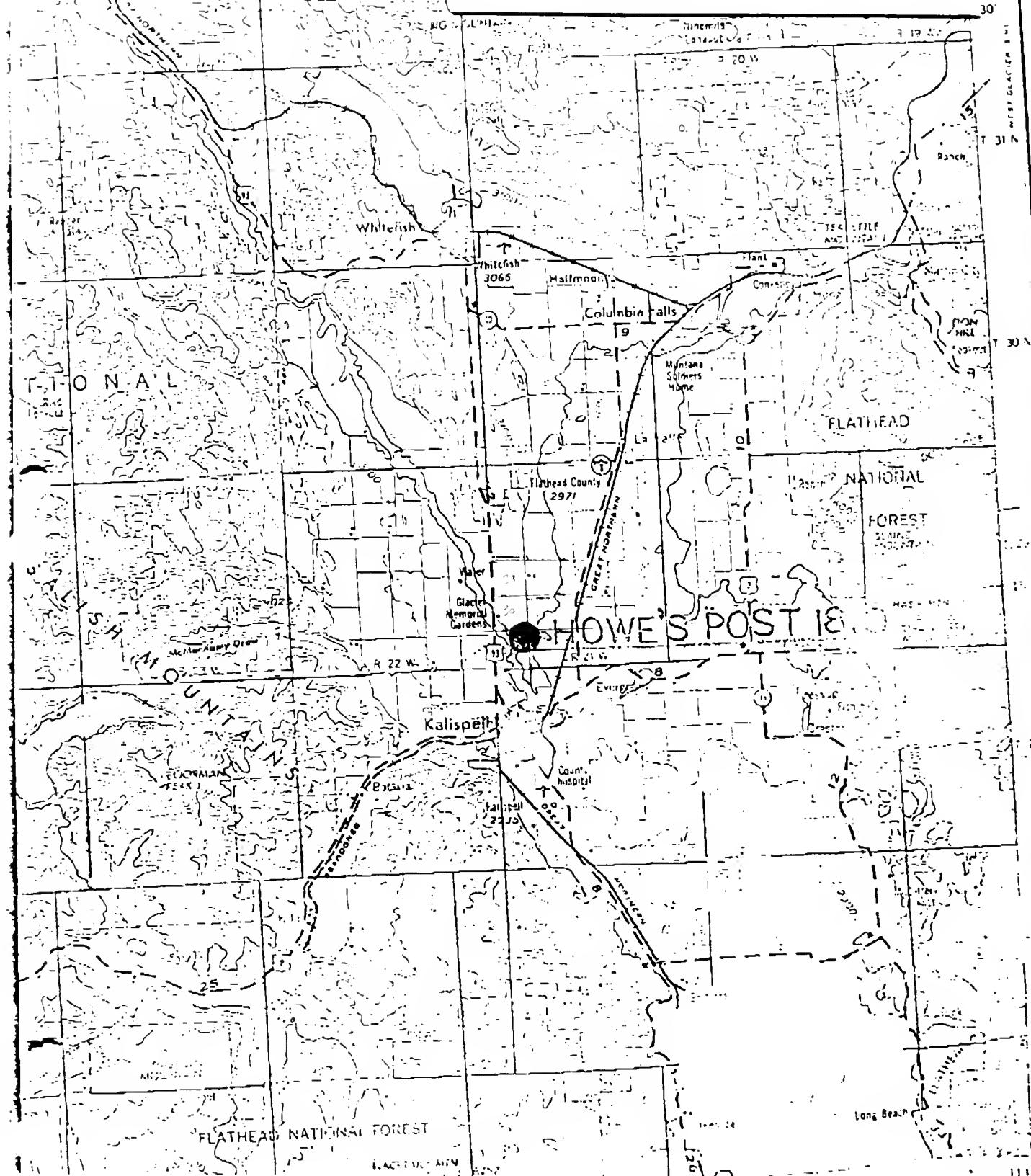


Phillip Melton  
Cultural Records Manager

File: MDOT/ 1999

RECEIVED  
DEC 22 1999  
ROBERT PECCIA  
& ASSOCIATES

To	Dan Ward	From	Rani
Co.		Co.	Arch Records
Dept.	24 FH 354	Phone #	243-5525
Fax #	447-5036	Fax #	



From: "Melton, Phil" <pmelton@state.mt.us>  
To: 'Dan Norderud' <dan@rpa-hln.com>  
Subject: RE: MDT - NUPAC Land Exchange ; SHPO Project # 99121404  
Date sent: Mon, 24 Jan 2000 09:15:36 -0700

Dear Mr... Norderrud:

Thank you once again for the opportunity to comment on the above cited project area. I have conducted a new file search with the revised legal description that you gave us of Section 19, T29N R21W Flathead County. According to the statewide cultural resource database there are currently no previously recorded historic or archaeological sites within the designated search locale. However there have been three previous cultural resource inventories in the area. I have enclosed a list of the reports, which lists basic information such as author, title, and date completed. The report is in .rtf format and should be able to be read in most word processing programs. If you need further information on these reports you may contact me at the number listed below.

We feel that based on the previous inventory of the area and that no sites are known to exist in the area that there is a low likelihood of cultural properties being impacted by this undertaking. However, if cultural properties are encountered we would ask that our office be contacted and the site investigated. Thank you for consulting with us.

If you have any further questions of comments please feel free to contact me at (406)-444-7767 or by e-mail at pmelton@state.mt.us  
<mailto:pmelton@state.mt.us> .

Sincerely,

Phillip E. Melton  
Cultural Records Manager  
State Historic Preservation Office  
Montana Historical Society  
PO Box 201202  
Helena MT 59620  
(406)-444-7767  
fax- (406)-444-6575  
e-mail: pmelton@state.mt.us <mailto:pmelton@state.mt.us>

-----Original Message-----

From: Dan Norderud (mailto:[dan@rpa-hn.com](mailto:dan@rpa-hn.com))  
Sent: Monday, January 10, 2000 2:14 PM  
To: [pmelton@state.mt.us](mailto:pmelton@state.mt.us)  
Subject: MDT - NUPAC Land Exchange ; SHPO Project # 99121404

Dear Mr. Melton:

I received correspondence from you last month regarding a request I made for you to conduct a cultural resource file search on two properties north of Kalispell involved in a land exchange. The parcels are owned by MDT and a private company (Pack & Company).

Your 12/21/99 reply to me indicated that a previously recorded cultural site 24FH354, Howe's Post, is located in Section 29 of Township 29 North, Range 21 West. I followed up with the UM Archeological Records Office and got a general map of 24FH354's location and a verbal description of where the site is in Section 29.

After reviewing this information and other maps of the area, I determined that the parcel in question lies in Section 19 not Section 29 of Township 29 North, Range 21 West.

This inadvertent error is due to some rather confusing section numbering in this township and range and some wrong information provided to me by my client. In short, I would like to ask you to check your files for Section 19 of Township 29 North, Range 21 West for the existence of any previously recorded properties. I have reviewed the recent Somers to Whitefish EIS done for the improvement of U.S. Highway 93 which is adjacent to the parcel in Section 19 and there are no historic properties identified along this section of Highway 93. The road widening and improvements would require new R/W from the parcel in question so it is my belief that the chance for encountering historic properties is small in this area.

If it is convenient for you, your email reply to this request will serve as sufficient coordination for my administrative record for this project.

Thanks in advance for your time and attention to this matter.

Dan Norderud

# Flathead Regional Development Office

723 5th Avenue East - Room 414  
Kalispell, Montana 59901

Phone: (406) 758-5980  
Fax: (406) 758-5781

January 20, 2000

Daniel M. Norderud, AICP  
Environmental Planner  
Robert Peccia & Associates  
P O Box 5653  
Helena, MT 59604

Re: Nupac / MDT Land Exchange Environmental Review

Dear Daniel:

This letter is in response to your request for comments regarding the proposed land exchange north of Kalispell between the Montana Department of Transportation (MDT) and Nupac. The property under consideration is a trade of an approximately 8.8 acre site adjoining the Nupac site to the west and fronting along Highway 93. The property proposed for exchange to MDT for the site adjoining Nupac is located north of East Reserve Drive approximately one mile and east of Highway 93 and contains approximately 8.95 acres. The property can be described as Assessor's Tract 2G located in Section 19, Township 29 North, Range 21 West, P.M.M., Flathead County Montana.

In researching this property, we can state that this property is in the Highway 93 North Zoning District and is zoned SAG-10, a Suburban Agricultural zoning district. This zoning district has a ten acre minimum lot size requirement and is intended to provide an area between urban development to the south and agricultural uses in the immediate area. There are some non-agricultural and non-residential uses in the immediate area which existed prior to the time zoning was adopted for this area in 1991; specifically, the National Guard Armory maintenance facility and Sonju Auto Body. Also, the maintenance facility for Northern Pines Golf Course and the Four Square Church are in the area and were approved through the conditional use permit process. However, the increasing number of non-residential and non-agricultural uses which seem to move into the area have the potential to undermine the integrity and purpose of zoning for the area; one of which is to arrest the "strip development" that tends to occur along highway corridors.

Because this use is not permitted in the district and governmental agencies are exempt from zoning regulations as provided for under Section 76-2-402 MCA, a public hearing would have to be held before the Flathead County Board of Adjustment to allow for public comment on the proposed development of this site.

January 20, 2000

Page 2

I hope this letter will help to provide you with some of the information necessary to review and adequately address this proposal. Please call Narda Wilson, Senior Planner, at (406)758-5980 if our office can be of further help to you.

Sincerely,



Thomas R. Jentz  
Planning Director

TRJ/NW/sm

H\...\LETTERS\2000\NUPACSWAP.DOC



1/20/2000

DEBET PECCIA



# United States Department of the Interior

FISH AND WILDLIFE SERVICE  
MONTANA FIELD OFFICE  
100 N. PARK, SUITE 320  
HELENA MT 59601  
PHONE (406) 449-5225, FAX (406) 449-5339



M.44 MDOT (1)

January 24, 2000

Daniel M. Norderud  
Robert Peccia & Associates  
P.O. Box 5653  
825 Custer Avenue  
Helena, Montana 59604

Subject: MDT/NUPAC Land Exchange Environmental Review; Flathead County, Montana

Dear Mr. Norderud:

This letter is in response to your December 9, 1999 correspondence regarding the subject proposed land exchange north of Kalispell in Flathead County, Montana. Your letter requested information the Fish and Wildlife Service (Service) may have pertaining to threatened and endangered (T/E) species that may occur in the proposed project area. These comments have been prepared under the authority of, and in accordance with, the provisions of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 et.seq.) and the Fish and Wildlife Coordination Act (16 U.S.C. 661 et. seq.).

In accordance with section 7(c) of the Act, the Service has determined that the following threatened, endangered and proposed species may be present in the project corridor:

Listed Species

bald eagle (*Haliaeetus leucocephalus*); threatened

Expected Occurrence

spring or fall migrant; possible nesting nearby; winter resident

bull trout (*Salvelinus confluentus*); threatened

Stillwater River drainage

Proposed Species

none

Section 7(c) of the Act requires that Federal agencies proposing major construction activities complete a biological assessment to determine the effects of the proposed actions on listed and proposed species and use the biological assessment to determine whether formal consultation is required. A major construction activity is defined as "a construction project (or other undertaking having similar physical impacts) which is a major Federal action significantly affecting the quality of the human environment as referred to in the National Environmental Policy Act (NEPA)" (50 CFR Part 402). If a biological assessment is not required (i.e. all other actions), the Federal agency is still required to review their proposed activities to determine whether listed species may be affected. If such a determination is made, formal consultation with the Service is required.

For those actions wherein a biological assessment is required, the assessment should be completed within 180 days of initiation. This time frame can be extended by mutual agreement between the Federal agency or its designated non-Federal representative and the Service. If an assessment is not initiated within 90 days, this list of threatened and endangered species should be verified with the Service prior to initiation of the assessment. The biological assessment may be undertaken as part of the Federal agency's compliance of section 102 of NEPA and incorporated into the NEPA documents. We recommend that biological assessments include the following:

1. A description of the project.
2. A description of the specific area that may be affected by the action.
3. The current status, habitat use, and behavior of T/E species in the project area.
4. Discussion of the methods used to determine the information in Item 3.
5. An analysis of the affects of the action on listed species and proposed species and their habitats, including an analysis of any cumulative effects.
6. Coordination/mitigation measures that will reduce/eliminate adverse impacts to T/E species.
7. The expected status of T/E species in the future (short and long term) during and after project completion.
8. A determination of "is likely to adversely affect" or "is not likely to adversely affect" for listed species.
9. A determination of "is likely to jeopardize" or "is not likely to jeopardize" for proposed species.
10. Citation of literature and personal contacts used in developing the assessment.

If it is determined that a proposed program or project "is likely to adversely affect" any listed species, formal consultation should be initiated with this office. If it is concluded that the project "is not likely to adversely affect" listed species, the Service should be asked to review the assessment and concur with the determination of no adverse effect.

Pursuant to section 7(a) (4) of the Act, if it is determined that any proposed species may be jeopardized, the Federal agency should initiate a conference with the Service to discuss conservation measures for those species. For more information regarding species of concern occurring in the project areas, including proposed species, please contact the Montana Natural Heritage Program, 1515 East 6th Ave., Helena, 59601, (406) 444-3009.

A Federal agency may designate a non-Federal representative to conduct informal consultation or prepare biological assessments. However, the ultimate responsibility for Section 7 compliance remains with the Federal agency and written notice should be provided to the Service upon such a designation. We recommend that Federal agencies provide their non-Federal representatives with proper guidance and oversight during preparation of biological assessments and evaluation of potential impacts to listed species.

Section 7(d) of the Act requires that the Federal agency and permit/applicant shall not make any irreversible or irretrievable commitment of resources which would preclude the formulation of reasonable and prudent alternatives until consultation on listed species is completed.

While we do not foresee any substantive issues with the proposed project with regard to bald eagles, any power lines in the vicinity, if not properly constructed, could pose electrocution hazards for this species. To conserve bald eagles and other large raptors protected by Federal law, we urge that any power lines

that need to be modified or reconstructed as a result of these projects be raptor-proofed following the criteria and techniques outlined in the publication, "Suggested Practices for Raptor Protection on Power Lines: The State of the Art in 1996." A copy may be obtained from: Jim Fitzpatrick, Treasurer, Carpenter Nature Center, 12805 St. Croix Trail South, Hastings, MN 55033. The use of such techniques would likely be most beneficial adjacent to expected raptor foraging areas (i.e. stream crossings or wetlands that support populations of waterfowl).

Your letter does not mention whether wetlands might be impacted by the proposed land exchange. If so, Corps of Engineers (Corps) Section 404 permits may eventually be required. In that event, depending on permit type and other factors, the Service may be required to review permit applications and will recommend any protection or mitigation measures to the Corps as may appear reasonable and prudent based on the information available at that time.

If you have questions regarding this letter, please contact Scott Jackson, of my staff, at the address above or by phone at (406) 449-5225, ext. 201.

Sincerely,



Kemper M. McMaster  
Field Supervisor  
Montana Field Office

cc: Mark Traxler, MDOT, Environmental Services, 2701 Prospect Ave., Helena 59620-1001  
FWS-ES, Kalispell Suboffice

*MDT - Pack and Company Land Exchange  
Environmental Review*

***APPENDIX D: P.U.D. AGREEMENT  
BETWEEN PACK AND CITY***



1999216 08450

K

ORDINANCE NO. 1324

AN ORDINANCE APPROVING A PLANNED UNIT DEVELOPMENT ON CERTAIN REAL PROPERTY OWNED BY THE DEPARTMENT OF TRANSPORTATION, STATE OF MONTANA AND PACK AND CO.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF KALISPELL, AS FOLLOWS:

**SECTION I.** That the Planned Unit Development proposed by DOMESITE upon the real property described in Exhibit "A", attached hereto, incorporated herein, and thereby made a part hereof, is hereby approved, subject to:

B) Development Agreement, dated July 27, 1999, between DOMESITE and the City of Kalispell, [Exhibit "B", attached hereto, incorporated herein and thereby made a part hereof].

**SECTION II.** This Ordinance shall take effect from and after 30 days of its passage by the City Council.

PASSED AND APPROVED BY THE CITY COUNCIL AND SIGNED BY THE MAYOR OF THE CITY OF KALISPELL, MONTANA, THIS 12<sup>th</sup> DAY OF JULY, 1999.

Wm. E. Boharski.

Wm. E. Boharski  
Mayor

ATTEST:

Theresa White

Theresa White  
City Clerk



STATE OF MONTANA  
County of Flathead  
City of Kalispell }  
} SS

I hereby certify that the instrument to which this certificate is affixed is a true, correct and complete copy of the original on file in the office of the Clerk of the City of Kalispell.

Witness my hand and the seal of the City of Kalispell, Flathead County, Montana, this 24<sup>th</sup> day of August, 1999  
by Theresa White

## DOMESITE PLANNED UNIT DEVELOPMENT AGREEMENT

This Agreement made and entered into this 27 day of July, 1999, is by and between Domesite, L.L.C., a Minnesota Limited Liability Corporation, with its office and principal place of business located at 50 South Ninth Street, Ste. 200, Minneapolis, Minnesota, hereinafter **DOMESITE**, Pack and Company, with its office and principal place of business at 2355 Highway 93 North, Kalispell, Montana, hereinafter **PACK**, and the City of Kalispell, a municipal corporation, with its office and principal place of business located at 312 1st Avenue East, Kalispell, Montana 59901, hereinafter **CITY**:

## W I T N E S S E T H:

WHEREAS, DOMESITE is the contract purchaser and consensual developer with PACK of certain real property located in Flathead County, Montana, which is further described in Exhibit "A" attached hereto and hereby made a part hereof, and which hereinafter is referred to as the "Subject Property"; and,

WHEREAS, DOMESITE, PACK, and the present fee owners of the Subject Property have made a request for annexation of the property described into the City of Kalispell; and,

WHEREAS, (i) DOMESITE and PACK desire to have the Subject Property rezoned from Industrial (I-1) to a Commercial (B-2) Planned Unit Development (PUD), mapped with certain new streets, building locations and accesses from U.S. Highway #93 and West Reserve Drive; (ii) PACK, has filed a PUD and Annexation application which contains (a) Zone change application, (b) PUD Narrative with Exhibits (c) perimeter legal description, (d) Title Report, (e) land owner consent to plan and (f) large map exhibit; and,

WHEREAS, in order to allow the PUD and Annexation, assure the installation of Infrastructure improvements with the "Subject Property," permit connections to the City utility systems, and prescribe the permitted uses within the requested zoning areas, the parties hereto determine it is to be in their best interests to enter into this Planned Unit Development Agreement.

## I. DEFINITIONS

1.01 **Agreement** shall mean this Planned Unit Development Agreement between DOMESITE, PACK, and CITY.

1.02 **Building Department** shall mean the Building Department of the City of Kalispell.

1.03 **City** shall mean the City of Kalispell, Montana.

1.04 **City Council** shall mean the City Council of the City of Kalispell, Montana.

1.05 **Developer** shall mean DOMESITE with respect to Areas A and B of the Subject Property, and PACK or its successor in interest with regard to Area C of the Subject Property.

1.06 **Director of Public Works** shall mean the Director of Public Works of the City of Kalispell, Montana.

1.07 **Easement(s)** means the Easement(s) described in §3.04 of this Agreement.

1.08 **Master Site Plan** means the site plan proposed for the development of the Subject Property annexed hereto as Exhibit B.

1.09 **Project Site Plan** means the site plan proposed for the development of the Subject Property annexed hereto as Exhibit C.

1.10 **Phase** means a stage of development within a portion of the Subject Property designated in the Master Site Plan.

1.11 **Proposed Buildings** means the buildings shown on the Master Site Plan, contemplated to be built in phases.

1.12 **Subject Property or Subject Area** means the real property described in Exhibit "A" annexed hereto and made a part hereof.

1.13 **Substantial Completion** shall mean that substantially all of the work to be performed in the development of each Phase shall have been performed and the improvements constructed in each Phase are usable for their intended purposes, as certified by the Director of Public Works and the Building

Department, which certification shall not be unreasonably withheld or delayed.

1.14 **Infrastructure** means all water mains, sewer mains and storm drains defined as eight inch (8") pipe size or larger including associated shut-off valves, fire hydrants, sewer manholes, lift stations (if any) installed in accordance with the Montana Public Works standard specifications and the City of Kalispell standards and general provisions for design and construction. In addition, Infrastructure shall include those roads that will be dedicated to the City and are constructed in accordance with the Montana Public Works standard specifications and the City of Kalispell standards and general provisions for design and construction. Said infrastructure shall consist of the various public utilities and streets of the type designated on C1.2 and C1.3, attached hereto as Exhibits "A & B" and thereby made a part hereof. Cost for said infrastructure shall be as shown on Engineers' Estimate, Infrastructure Improvements, Domesite PUD, Hwy 93 North, prepared by Jackola Engineering, attached hereto as Exhibit "C" and thereby made a part hereof.

## II. GENERAL DEVELOPMENT AND USE OF THE SUBJECT PROPERTY

### 2.01 Development Overview

- (A) Subject to the other provisions of this Agreement, any development within or use of the Subject Property occurring after the effective date of this Agreement shall substantially conform to and comply with the provisions of the PUD Application of July 22, 1998, as amended and approved by the FRDO Staff Report #KPUD-98-1 and the City County Planning Board meeting on August 11, 1998, and the documents and drawings annexed to this Agreement.
- (B) Developer represents, and it is agreed between the parties, that the development of the Subject Property shall be accomplished in Phases, as follows:
  - (1) Phase I shall consist of (i) ground preparation and site leveling of the entirety of the Subject Area; and, except as referenced in 2.01(C), (ii) the construction, installation, and extension of utility mains and water lines to the Subject Area.
  - (2) Phase II shall consist of construction of the roads, parking lots, landscaping, and other site

improvements and interior streets in those portions of the Subject Area comprising "Area A" and "Area B" as described on the Site Plan, which may be installed as each lot is developed within the site, and which may be developed to the extent necessary to serve each lot during development.

- (3) Phase III shall consist of final site preparation, streets, installation of parking lots, landscaping, and construction of the building improvements in that portion of the Subject Areas comprising "Area C" as described on the Site Plan, specifically the coliseum, main convention center, and adjoining facilities.
- (C) Notwithstanding paragraph 2.01(B)(1) above, it is anticipated that site preparation and ground leveling of areas currently occupied by batch plant facilities will be delayed during the construction phases described above, for a term not to exceed five (5) years, after which, it is agreed that removal and relocation of the NUPAC batch plant, associated equipment, and warehouses will be completed.
- (D) Developer represents, and it is agreed between the parties, that the highest point of the roof or parapet wall of the buildings constructed on the Subject Property, when measured from the average level of the finished ground surface surrounding the structure within a distance of twenty feet (20'), shall not exceed thirty feet (30') in Area A, shall not exceed fifty-five feet (55') in Area B, and in Area C, the coliseum shall not exceed a height of 110 feet (110').
- (E) The use of large blank walls on the buildings within the development, particularly Area A which face U.S. Highway #93 and West Reserve Drive, shall be minimized.
- (F) Commensurate with the execution of this Agreement the DOMESITE and PACK shall furnish security for the infrastructure improvements described in § 1.14, supra. Such security shall consist of, at the sole option of Developer, performance bond(s) issued by a surety company licensed to do business in Montana, irrevocable letter(s) of credit issued by a bank licensed to do business in Montana, or such other security as shall be reasonably acceptable to the CITY. DOMESITE shall have the option of pledging the real property within Areas A and B to secure

performance of this Agreement. Such security shall be for the benefit of and enforceable and collectible by the CITY, acting through the City Manager, and shall be in an initial face amount equal to 125% of the direct estimated cost of the work so secured, as certified by Developer's licensed professional engineer and the City's Director of Public Works. If such security consist of letter(s) of credit, the face amount thereof shall be reduced by Developer from time to time in an amount equal to three-quarters of the cost of the work completed, as certified by Developer's licensed professional engineer and approved by the City's Director of Public Works. Determination of the amount of the reduction shall be made within 30 days of receipt by the Public Works Director of said certification. Developer may request final release of the performance bond upon filing with the Building Department a Notice of Completion, which will then be reviewed by CITY for final approval.

- 1) The infrastructure improvements, under § 1.14 shall be substantially completed on or before July 1, 2006, unless an extension for the development is granted by the City Council. Said extension shall not be unreasonably withheld. If said infrastructure improvements are not completed, and no extension received, the Council shall redesignate the undeveloped portion of the Subject Property in accordance with the City of Kalispell Zoning Ordinance, and proceed to exercise its rights to secure, under paragraph E, supra, infrastructure improvements under this Agreement.

## 2.02 No Hazardous Substances

DOMESITE AND PACK represent that the Subject property is not subject to any federal, state or local "Superfund" lien proceeding, claim, liability or action, or threat or likelihood thereof, for the cleanup, removal or re-mediation of any "hazardous substance" from said property, and the DOMESITE and PACK have not caused and will not cause, and to the best of DOMESITE's and PACK's knowledge there never has occurred a release, leak, discharge, spill, disposal or emission of any "hazardous substance" as of the date hereof. "Hazardous substance" means any substance that is toxic, ignitable, reactive, or corrosive and that is regulated by any local government, State of Montana, or the United States. "Hazardous substance" includes any and all material or substances that are defined as "hazardous wastes", extremely

hazardous waste" or "hazardous substance" pursuant to state, federal or local governmental law including without limitation CERCL, SARA, RCRA, the Clean Water Act, the OSHA Act, or the Toxic Substance Control Act. "Hazardous substance" includes, but is not limited to asbestos, petroleum products, nuclear fuel, or materials, known carcinogens, urea formaldehyde, foam-in-place, insulation, and polychlorinated biphenyl (PCBs).

1. DOMESITE and PACK shall supply to the City a Letter Closure issued by the State Department of Health and Environmental Sciences.
2. In the event that any of the representations and warranties set forth in this section are not true in any material respect no property subject to this Agreement may be pledged as security for the installation of infrastructure.

## 2.03 Uses

- (A) The primary use of Areas A and B of the Subject Property shall comprise a variety of commercial uses, including but not limited to retail establishments, offices, restaurants, hotels, and other similar uses, but shall not include commercial establishments which require large areas for outdoor displays, such as automobile sales, recreational vehicle sales, boat sales, and other similar uses. It is agreed that no more than 25% of the merchandise placed for display for sales by any commercial user may be placed outdoors.
- (B) Area C shall be comprised of a sports and multipurpose coliseum complex, with additional commercial amenities adjacent thereto.
- (C) Developer agrees that building design and construction upon the Subject Property shall conform to the relevant Building Departments regulations governing commercial construction.
- (D) Developer agrees that the development shall be comprised of buildings with a consistent architectural theme as initially determined by the Developer, that will convey a "village concept." This concept includes a pedestrian oriented development with sidewalks, landscape boulevards and bike paths. For purposes of this Agreement, the term "village concept" includes a pedestrian-oriented

development with landscaped boulevards. The village pod concept of development includes a number of anchor stores with shops, restaurants, or offices with landscape. The landscaped area could be utilized for outdoor seating for any restaurants, for employee eating and break area, and the public to rest in a relaxed atmosphere. The architectural character of the structures would generally follow a motif such as: a combination of stone, rock, or brick as wainscot, columns, and accent; with wood possibly utilized as the main architectural element.

## 2.04 Ownership

- (A) In Areas A and B, DOMESITE represents, and it is agreed between the parties, that the Subject Property and buildings constructed thereon may be conveyed, with ownership transferred by DOMESITE to the building occupant. It is anticipated that ownership of a portion of the property comprising Areas A and B will remain in DOMESITE, which will enter into leases with the occupants of the buildings constructed thereon.
- (B) In Area C, it is anticipated that title will remain in fee simple with PACK until such time as a suitable developer has been procured to commence and complete construction of the coliseum complex. Ownership of the underlying real property in Area C will be subject to contract between the current fee owner and the future coliseum complex developer.

## 2.05 Relationship to Zoning Ordinance

Except as specifically modified or superseded by this Agreement and attached drawings, the PUD Application of July 22, 1998 as amended and approved in the FRDO Staff Report #KPUD-98-1 and the City County Planning Board on August 11, 1998, the laws, rules, and regulations of the City of Kalispell governing the use and development of land and buildings, including the City of Kalispell Zoning Ordinance, shall apply to the Subject Property.

## 2.06 Drawings

The site plan drawings attached and the PUD Application dated July 22, 1998 as amended and approved in the FRDO Staff Report #KPUD-98-1 and the City County Planning Board on August 11, 1998, are an integral and essential component of this Agreement and are incorporated herein by reference.

## 2.07 Effectiveness and Cancellation

- (A) The provisions of this Agreement regarding construction of improvements on the Subject Property shall become effective simultaneously with the approval of both the PUD Ordinance and Annexation request by the City Council and shall terminate upon the issuance of a building permit(s) for development of the last Phase on the Subject Property, as set forth above. This Agreement may only be modified or amended as set forth in Article V, hereof.
- (B) Notwithstanding the terms of paragraph (A), supra, upon the termination of this Agreement, the terms of this Commercial PUD related to zoning shall continue to be effective as the regulations pertaining to the DOMESITE Planned Unit Development.

## 2.08 Certification Procedure

Whenever under this Development Agreement a certificate by the Director of Public Works is required to be given, such certificate shall be given after the receipt of a completed application therefor and approved by the Director. Such an application shall be deemed completed upon receipt of such drawings and narrative information as are reasonably necessary for the issuance of such certificate, which certification shall not be unreasonably withheld or delayed.

## III. SITE CONDITIONS

### 3.01 Development

The Subject Property shall be developed with the Infrastructure improvements as described in this Agreement.

### 3.02 Access

- (A) Primary access to the Subject Property shall be via the major entrances located on the south boundary of the Subject Property from U.S. Highway #93 and on the east boundary of the Subject Property from West Reserve Drive. Secondary accesses will be provided via four (4) right-turn only accesses, both in and out, along U.S. Highway #93 North and on West Reserve Street, as shown on Exhibit "B."

(B) DOMESITE agrees that it shall, at its own expense, have a comprehensive traffic impact study completed, which will identify all expected traffic impacts and will provide proposals for mitigation.

(1) Following completion of the comprehensive study, DOMESITE will obtain all necessary access permits from the Montana Department of Transportation and/or Flathead County Road Department and CITY prior to use.

(2) DOMESITE agrees to pay for all necessary traffic turn lanes, traffic signals, and other regulatory signs and signals directly pertaining to ingress and egress to and from U.S. Highway #93 and West Reserve Drive, as required by the comprehensive traffic study and CITY.

(C) All primary and secondary entrances shall be completed to CITY standards prior to occupancy permits being issued for any site utilizing said entrances for access.

(D) The two primary accesses shall be constructed to accommodate a multi-lane roadway which will be constructed along the south and east perimeter boundaries of the Subject Area, as shown on Exhibit "B," which roadway shall comply with recommendations of the traffic study referred to above, and which shall be reviewed and subject to approval by CITY.

(E) Emergency fire, ambulance, police and public vehicle access shall be at all times available through said primary and secondary access without impediment.

### **3.03 Private Internal Roadways, Bike Paths and Sidewalks**

(A) DOMESITE and PACK acknowledge that the development of the Subject Property includes development, at the Developer's expense, of internal roadways providing access to the lots within the PUD.

(B) Developers agree that the interior roadways within the PUD shall be constructed to CITY standards with curb, gutter, and sidewalks on at least one side of the roadways, in accordance with the proposed Site drawings and applicable CITY Standards for Design and Construction for local and collector streets, as amended to account

for multi-lane road traffic with respect to the main access roadway.

- (C) Internal local and connector streets and roadways, with landscaping amenities shall be constructed as necessary to service all building sites and lots requiring access, and shall be named and signed in accordance with CITY Standards for Design and Construction.
- (D) DOMESITE and PACK agree that they will maintain all internal streets, boulevards, and sidewalks as private with unrestricted public access.
  - (1) Sidewalks shall be provided as shown on the Site Plan, in addition to sidewalks which will connect Area A to the west with Area B to the east, within the medians indicated on the Site Plan at the perimeter of the parking lots.
  - (2) There will be a minimum of one pedestrian sidewalk connection between Area B and Area C, which will be located between Lots 8, 9, 10, 11, and 12, at Developer's discretion.
- (E) The primary access roadway shall consist of a multi-lane roadway as required by the traffic study referred to above and shall be located on the south boundary of the Subject Property which intersects with U.S. Highway #93, and continuing to the east boundary of the Subject Property where it will intersect with West Reserve Drive.
  - (1) It is anticipated that construction of the multi-lane roadway will be accomplished in conjunction with the development phases.
  - (2) Developers and CITY agree that during the development of Areas A and B, an improved roadway, the size of which will be determined by the traffic study and which will be subject to approval by the CITY, will be permissible for interior site access.
  - (3) At such time as construction of the building structures is commenced in Area C, Developer will at that time be required to expand the primary access roadway to multiple lanes as provided in the FRDO Staff Report #KPUD-98-1, dated August 4, 1998, as amended August 11, 1998, and as required by the

traffic study to be completed by DOMESITE in accordance with this Agreement.

- (4) The primary access multi-lane roadway along the perimeter of the Subject Property shall be designed and developed so that it does not exceed a six-percent (6%) grade in any area. Lanes shall be twelve feet (12') in width with a five foot (5') wide bicycle path on each side.
- (5) The primary access roadway shall be posted with a maximum 25 mile per hour speed limit.
- (6) Following completion of the main access roadway as part of Phase III of the Development, it is agreed that the main roadway located on the southerly boundary and continuing on the easterly boundary of the Subject Property shall be dedicated to the public and shall at that time be maintained by CITY in the same manner as other publicly-dedicated CITY roadways.

(F) Prior to the Building Department issuing any permit of any foundation or building permit on a Phase, Developer shall furnish security for the Infrastructure improvements, in substantial conformity to and compliance with the provisions of this Agreement, of the improvements specified in this section. Such security shall consist of, at the sole option of Developer, performance bond(s) issued by a surety company licensed to do business in Montana, irrevocable letter(s) of credit issued by a bank licensed to do business in Montana, the real property subject to this PUD Agreement, or such other security as shall be reasonably acceptable to the CITY. Such security shall be for the benefit of and enforceable and collectible by the CITY, acting through the City Manager, and shall be in an initial face amount equal to 125% of the direct estimated cost of the work so secured, as certified by Developer's licensed professional engineer and the City's Director of Public Works. If such security consist of letter(s) of credit, the face amount thereof shall be reduced by Developer from time to time in an amount equal to three-quarters of the cost of the work completed, as certified by Developer's licensed professional engineer and approved by the City's Director of Public Works. Determination of the amount of the reduction shall be made within 30 days of receipt by the Public Works Director of said

certification. Developer may request final release of the performance bond upon filing with the Building Department a Notice of Completion, which will then be reviewed by CITY for final approval.

- (1) In the event land is offered as collateral security, it is agreed that the value of the land shall be adequate to provide CITY with the guarantees of performance required under this section.
- (2) It is further agreed, that as each parcel of land is developed, bond security will be substituted for the land, such that the entirety of the Infrastructure improvement required hereunder are continually guaranteed throughout all phases of development of the Subject Property.
- (3) In the event Developer has provided land as collateral security and Developer appears to be prospectively unable to complete its obligations under this Agreement, or is otherwise unwilling to complete its obligations under this Agreement, the CITY may, at its option, demand that Developer provide CITY reasonable assurance of future performance, which may include, but not be limited to the following options:
  - (i) Transfer of unencumbered fee title to the undeveloped portions of the Subject Property owned by Developer, to the CITY;
  - (ii) Require the Developer to post bond security in sufficient amounts to guarantee completion of all Infrastructure improvements on the real property;
  - (iii) Any other similar forms of security reasonably deemed adequate by CITY to assure completion of the Infrastructure improvements on the entirety of the Subject Property.
- (4) In no event shall this Agreement be construed as to require CITY to complete installation of Infrastructure improvements on the Subject Property, or on any portion thereof, during any phase of development of the Subject Property.

## 3.04 Sewer and Water

(A) Sanitary sewer service to the Subject Area shall be accomplished via extension from the existing twelve inch (12") main existing at the current terminus near the Flathead Valley Community College (FVCC). Said sanitary sewer service shall be stubbed out at the further boundary through the property, in accordance with the CITY Extension of Services policy.

(B) CITY agrees that water service to the Subject Area may be provided by means other than a looped extension of the existing twelve inch (12") line which will be extended to the Subject Area from the current terminus near FVCC. An existing on-site water well will provide an alternative source of water service to the Subject Property, in the event maintenance requires a shutdown of the CITY water main to the Subject Property.

(1) DOMESITE and PACK agree that the on-site water well will be constructed in accordance with the City of Kalispell's Standards for Design and Construction.

(2) The on-site water well will be capable of producing sufficient quantities of water necessary to service needs to the Subject Property, as determined by hydraulic modeling tests, to be prepared by Developer prior to construction on the Subject Property. All costs associated with upgrade of the on-site water well, necessary to meet applicable City of Kalispell Standards and needs as determined by hydraulic modeling tests, shall be borne by DOMESITE.

(3) PACK represents and agrees that a valid water appropriation right has been filed and is of record with the State of Montana Department of Natural Resources and Conservation (DNRC). PACK agrees that this water right shall be transferred to the CITY at no cost to CITY at the completion of the project. At its option, PACK may transfer ownership of the said water well to CITY prior to completion of construction, with the understanding that CITY will not charge PACK or the Developer for well water used on-site during construction.

(4) In the event the on-site water well does not provide an adequate alternative to the "looped"

water system and cannot, through reasonable means, be brought into compliance with applicable Federal, State, and City Standards by DOMESITE and PACK, then DOMESITE and PACK, collectively, shall have the option of rescinding this Agreement in its entirety. DOMESITE and PACK, upon rescission, under this paragraph, shall petition the City for the exclusion of the Subject Property pursuant to § 7-2-4801, et seq. M.C.A. (Provisions for de-annexation).

- (C) All sanitary sewer and water utilities shall be designed and installed as shown on Preliminary Project Plan C1.3 and in accordance with the City of Kalispell's Standards for Design and Construction.
- (D) All utility Infrastructure located within the Subject Property shall be the property and maintenance responsibility of Developers, until such time as the installation is completed and dedicated to the public.
- (E) DOMESITE agrees to obtain all necessary easements for the extension of water and sewer to the Subject Property. In addition, Developer will grant to CITY any and all easements necessary for CITY to perform maintenance of water and sewer lines installed pursuant to this Agreement.
- (F) No expansion of the sanitary sewer system is anticipated. However, in the event that CITY requires installation or expansion of water and/or sewer lines larger than those required to service the current needs of CITY and of Developer as determined by hydraulic modeling tests, then CITY shall pay those only costs associated with the increased utility main sizing to the Subject Property.
- (G) Prior to the Building Department issuing any permit of any foundation or building permit on a Phase, Developer shall furnish security for the Infrastructure improvements, in substantial conformity to and compliance with the provisions of this Agreement, specified in this section. Such security shall consist of, at the sole option of Developer, performance bond(s) issued by a surety company licensed to do business in Montana, irrevocable letter(s) of credit issued by a bank licensed to do business in Montana, the real property subject to the PUD Agreement, or such other security as shall be reasonably acceptable to the City. Such security shall

be for the benefit of and enforceable and collectible by the City, acting through the City Manager, and shall be in an initial face amount equal to 125% of the direct estimated cost of the work so secured, as certified by Developer's licensed professional engineer and the City's Director of Public Works. If such security consist of letter(s) of credit, the face amount thereof shall be reduced by Developer from time to time in an amount equal to three-quarters of the cost of the work completed, as certified by Developer's licensed professional engineer and approved by the City's Director of Public Works. Determination of the amount of the reduction shall be made within 30 days of receipt by the Public Works Director of said certification. Developer may request final release of the performance bond upon filing with the Department of Public Works a Notice of Completion, which will then be reviewed by CITY for final approval.

- (1) In the event land is offered as collateral security, it is agreed that the value of the land shall be adequate to provide CITY with the guarantees of performance required under this section.
- (2) It is further agreed, that as each parcel of land is developed, bond security will be substituted for the land, such that the entirety of the Infrastructure improvement required hereunder are continually guaranteed throughout all phases of development of the Subject Property.
- (3) In the event Developer has provided land as collateral security and Developer appears to be prospectively unable to complete its obligations under this Agreement, or is otherwise unwilling to complete its obligations under this Agreement, the CITY may, at its option, demand that Developer provide CITY reasonable assurance of future performance, which may include, but not be limited to the following options:
  - (i) Transfer of unencumbered fee title to the undeveloped portions of the Subject Property owned by Developer, to the CITY;
  - (ii) Require the Developer to post bond security in sufficient amounts to guarantee completion of

all Infrastructure improvements on the real property;

(iii) Any other similar forms of security reasonably deemed adequate by CITY to assure completion of the Infrastructure improvements on the entirety of the Subject Property.

(4) In no event shall this Agreement be construed as to require CITY to complete installation of Infrastructure improvements on the Subject Property, or on any portion thereof, during any phase of development of the Subject Property.

(H) Following completion of installation of the sewer and water lines on the Subject Property by Developer, it is agreed that the said utility lines shall be dedicated to CITY, and shall at that time be maintained by CITY in accordance with CITY maintenance policy and standards. However, service lines to individual buildings on site shall remain under private ownership and shall be privately maintained.

### **3.05 Storm Water**

(A) Storm Water retention, drainage, and disposal shall be handled in accordance with regulations of the CITY and the Montana Department of Environmental Quality.

(B) Storm Water will not be retained, treated or discharged off-site.

### **3.06 Site Grading**

(A) Site Grading of the Subject Property shall be subject to the City of Kalispell's Emission Control Plan and CITY Standards for Design and Construction.

(B) Prior to commencement of site grading DOMESITE and PACK agree to obtain an Air Quality Construction and Demolition Permit from the Director of Public Works, and to comply with the terms and conditions of said Permit during construction.

(C) A site grading plan shall be submitted to the Director of Public Works for review and approval prior to the commencement of any grading work.

### 3.07 Fire Suppression

- (A) Prior to the Building Department issuing any permit of any foundation or building permit on a Phase, the Fire Chief for CITY must certify that Developer has supplied a fire site access plan for the Subject Property and an engineered internal fire suppression system for the buildings to be constructed on the Subject Property, which will be in accordance with the Uniform Fire Code and will be acceptable to the Fire Chief.
- (B) DOMESITE and PACK agree to install hydrants and water mains in accordance with City of Kalispell Standards and to obtain approval thereof prior to construction from the City of Kalispell Fire Chief.

### 3.08 Landscaping

- (A) Street trees shall be placed within the landscaped boulevard for the street connecting the primary access with the secondary access and be spaced at 50 foot intervals and shall be a minimum of two-inch caliper at planting.
- (B) The primary access roadway shall have a one hundred foot (100') landscaped median in the middle lane at each major perimeter road entrance as shown on the Site Plan and a landscaped median for the entire length of the radius of the turn at the southeast perimeter corner of Area C of the Subject Property.
- (C) Landscaping and shrubbery in interior parking lots other than along pedestrian sidewalks will be installed and maintained below driver eye level to facilitate rapid recognition of potential driving hazards and to increase public safety.
- (D) Except as hereinafter provided, retaining walls in excess of six feet (6') tall shall be minimized.
  - (1) In the area of the coliseum/convention center loading dock, retaining walls higher than six feet (6') will be permissible.
  - (2) It is anticipated that landscape terracing will be utilizing retaining walls for the transition area between Areas B and C.

- (E) The landscaping along U.S. Highway #93 and West Reserve Drive shall include street trees placed at seventy-five foot (75') intervals which are a minimum two-inch caliper at planting.
- (F) In Area B, a landscaped area will be installed at the end of each parking aisle and the parking medians which will include a minimum of one street tree with a minimum of one-inch caliper at planting, along with other shrubs or greenery.

### **3.09 Off-site Bike Paths**

DOMESITE agrees to install a bike path along U.S. Highway #93 and West Reserve Drive as shown on the Site Plan, which will be consistent with the existing bike path along U.S. Highway #93, as soon as site conditions allow, or are practical. Internal bike paths on the Subject Property shall be constructed in accordance with requirements set forth above in Section 3.03.

### **3.10 Lighting**

- (A) Developers shall submit a lighting plan to CITY which utilizes attractive lighting fixtures and a type and level of lighting not exceeding what is appropriate for its purpose and which is consistent with all existing ordinances of the CITY.
- (B) The lighting plan shall be reviewed and approved by the Director of Public Works.

### **3.11 Signage**

- (A) Developers agree to submit a sign plan to the Kalispell Zoning Administrator which complies with the Kalispell Zoning Ordinance.
- (B) The major entrance signs located at the entrances from U.S. Highway #93 and West Reserve Drive shall not exceed a height of thirty-five feet (35') and shall not exceed thirty-five feet (35') in width. Reader board signs in these locations with a surface area of ten feet (10') by twenty-four feet (24') will be acceptable, with substantial supports utilizing masonry facing.

- (C) All signage on the Subject Property shall be made of natural colors and materials and utilize an integrated architectural design of lettering and materials compatible with the needs of activity sponsors and building owners and tenants.
- (D) It is specifically agreed that the large entrance sign referred to in part 3.11(B) above, will not be installed until construction of the proposed Dome as part of Phase III of the Development project.
- (E) Sculptures at the entrances not exceeding the size limitations for signage will be acceptable.
- (F) It is agreed that no signage will be permitted on the Subject Property advertising activities taking place at locations other than on the Subject Property.

#### IV. CITY SEWER/WATER CONNECTION FEES -

##### 4.01 Connection Fee Schedule

- (A) Connection fees for connection to the City Water and Sewer Utility, based upon Resolution No. 4287 and Resolution No. 4288, will be determined in accordance with CITY Standards and fee schedules, then in effect for commercial structures of the type to be placed on the Subject Property.
- (B) Developer agrees to pay the connection fees associated with the utility connections at the time of obtaining the Building Permit for each structure.
- (C) Developer will be entitled to reimbursement of a portion of the costs of installation and extension of sewer and water lines through "latecomer's fees" which shall be recovered in accordance with an agreement to be prepared within thirty (30) days of this agreement providing that all design costs, construction costs, right-of-way acquisition costs, or other costs incidental to providing sewer and water to the Project Site shall be subject to reimbursement from latecomer's.
  - (1) These costs shall be prorated to latecomers based on land area owned or controlled by latecomers who connect to sewer lines and water lines after installation thereof by the Developer.

(2) It is further agreed that square footage owned or controlled by the Developer or his successors and assigns shall be included in the overall computation of total square footage for purposes of determining the appropriate prorated latecomer's fee.

#### **V. AMENDMENT OR MODIFICATIONS OF AGREEMENT**

##### **5.01 Amendment or Modification Procedures**

This Development Agreement may be amended or modified only by application of Developer(s), in accordance with the procedures set forth herein. Applications for amendment or modification may be made to the City of Kalispell Site Review Committee.

- (A) Modifications of this Agreement which are deemed by said Site Review Committee to be minor modifications shall require only the consent of the Site Review Committee, and shall not require the consent of the City Council or any other public agency.
- (B) All amendments and modifications of this Agreement other than minor modifications shall require the approval of the City Council.
- (C) All applications for modifications or amendments of the Agreement shall be filed with the Site Review Committee and the Site Review Committee shall promptly, within 10 days, determine whether the modifications are major or minor.
- (D) The Site Review Committee shall make its determinations with respect to any application for minor modifications subject to this Section within 15 days after it determines the application to be subject to said minor modification.
- (E) If the amendment or modification requested is of such a nature as to require approval of the City Council, the Site Review Committee shall refer the matter to the City Council within fifteen (15) days after it determines the matter to require Council review.
- (F) Developers may appeal the decision of the Site Review Committee to the City Manager or City Council, who may affirm, reverse or modify the Site Review Committee decision.

## VI. CONSTRUCTION PHASING

### 6.01 General Requirements

No building permit in respect to the construction in any Phase shall be issued by the Building Department until:

- (A) The Zoning Administrator has certified to the Building Department that the proposed building(s) substantially conform to the Master Site Plan and §§2.01, 2.02 and 2.05 of this Agreement.
- (B) The Director of Public Works has certified to the Building Department that the Infrastructure improvements and roads referenced in this Agreement and/or shown on the Project Site Plan have been constructed or security guaranteeing the construction has been received by the City.
- (C) For purposes of this Section, the "Security" required shall be in an amount equal to 125% of the Developer's licensed engineer's estimate of the cost of constructing said improvements.

## VII. MISCELLANEOUS

### 7.01 Severability

In the event that any provisions of this Agreement shall be deemed, decreed, adjudged or determined to be invalid or unlawful by a court of competent jurisdiction, such provision shall be severable and the remainder of this Agreement shall continue to be of full force and effect.

### 7.02 Recordation

This Agreement, and any major amendments thereto, shall be recorded in the Office of the Flathead County Clerk and Recorder.

### 7.03 Entire Agreement - Primacy

This Agreement and the attachments, exhibits, plans, and reports referenced herein constitute the entire agreement between the parties and may only be amended as set forth herein. In the event during the term of this Agreement, there

is a variance between the provisions of this Agreement and any drawing or document submitted prior to execution of this Agreement, this Agreement shall take precedence.

#### 7.04 Integration

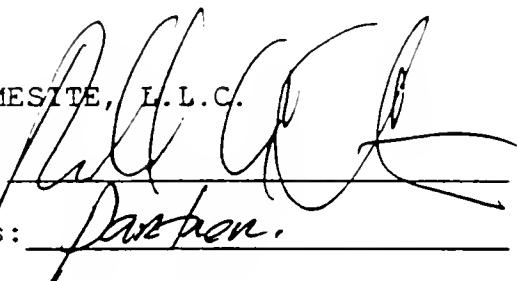
This Agreement, together with any attached exhibits and any addenda or amendments signed by the parties, integrates all negotiations and previous agreements between the parties and supercedes any other written or oral agreements or representations between the parties. This Agreement can be modified only in writing, signed by all parties hereto.

#### 7.05 Binding Effect

This Agreement shall be binding upon and inure to the benefit of the respective parties, heirs, successors and assigns.

Dated this 27 day of July, 1999.

DOME SITE, L.L.C.

By: 

Its: President.

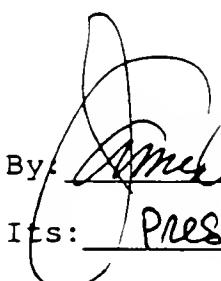
CITY OF KALISPELL

By: Chris A. Kuhnski

Its: CITY MANAGER

STATE OF MONTANA )  
 ) ss.

PACK and COMPANY

By: 

Its: PRESIDENT

Attest:

By: Amy Roberson

Its: Finance Director

County of Flathead )

On this 22 day of July, 1999, before me the undersigned, a Notary Public for the State of Montana, personally appeared Ronald A. Christensen known to me to be the authorized representative for DOMESITE, L.L.C., the person whose name is subscribed to the foregoing instrument and acknowledged to me that he/she executed the same on behalf of the said entity.

Cynthia C. Branno  
Notary Public for the State of Mo  
Residing at Whitefish, MT  
My Commission Expires 3/23/00

STATE OF MONTANA )  
 ) ss.  
County of Flathead )

On this 27th day of July, 1999, before me the undersigned, a Notary Public for the State of Montana, personally appeared Tim Lynch known to me to be the authorized representative for PACK and COMPANY, the person whose name is subscribed to the foregoing instrument and acknowledged to me that he/she executed the same on behalf of the said entity.

Brigan Lee Recco  
Notary Public for the State of Montana  
Residing at Lakeside, MT  
My Commission Expires 10/13/2003

STATE OF MONTANA )  
 ) ss.  
County of Flathead )

On this 14<sup>th</sup> day of July, 1999, before me the undersigned, a Notary Public for the State of Montana, personally appeared CHRIS KUKULSKI known to me to be the CITY MANAGER for the City of Kalispell, and AMY ROBERTSON the FINANCE DIRECTOR for the City of Kalispell, the persons whose names are subscribed to the foregoing instrument and acknowledged to me that he/she executed the same on behalf of the City of Kalispell.

Kathleen S. Kublin  
Notary Public for the State of Montana  
Residing at Helisell, Montana  
My Commission Expires 2/9/2002

STATE OF MONTANA }  
County of Butte }  
City of Butte } SS

23

more than \$100,000.00 the amount to which this certificate is  
21. to be paid to the County and County of the original on file in  
the office of the City of Kalispell, Montana.  
Witnessed by, I, and sworn to before the City of Kalispell, Flathead  
County, Montana, the 2nd day of Aug 1995  
by

## EXHIBIT "A"

## Parcel 1

That portion of Government Lots 1 and 2, the Northeast Quarter of the Northwest Quarter, and the Southeast Quarter of the Northwest Quarter of Section 31, Township 29 North, Range 21 West, P.M.M., Flathead County, Montana, more particularly described as follows:

Commencing at the Northwest corner of Section 31, Township 29 North, Range 21 West; thence along the North line of said section South  $89^{\circ}49'30''$  East, a distance of 70.00 feet to the Easterly line of U.S. Highway No. 93 right of way; thence along the Easterly line of said right of way South  $00^{\circ}07'10''$  West, a distance of 299.84 feet to the Point of Beginning of the parcel being described; thence continuing along the Easterly line of said right of way South  $00^{\circ}07'10''$  West, a distance of 640.87 feet; thence leaving said right of way South  $89^{\circ}04'58''$  East, a distance of 464.06 feet; thence South  $30^{\circ}17'34''$  East, a distance of 490.59 feet; thence South  $35^{\circ}16'49''$  West, a distance of 267.08 feet; thence South  $00^{\circ}05'30''$  East, a distance of 367.06 feet; thence South  $89^{\circ}58'50''$  East, a distance of 1100.31 feet; thence North  $14^{\circ}58'20''$  West, a distance of 1932.64 feet to the Southerly line of West Reserve Drive, a deeded County road; thence along the Southerly line of said West Reserve Drive the following courses: North  $89^{\circ}39'54''$  West, a distance of 363.71 feet, North  $00^{\circ}20'06''$  East, a distance of 20.00 feet, North  $89^{\circ}38'41''$  West, a distance of 374.94 feet, North  $00^{\circ}21'16''$  East, a distance of 5.55 feet, and North  $89^{\circ}57'09''$  West, a distance of 107.45 feet to the Southeasterly line of that parcel described in Deed Document No. 9321115400, records of Flathead County, Montana; thence along the Southeasterly line of said parcel, South  $18^{\circ}13'15''$  West, a distance of 252.67 feet to the Southeasterly corner of said parcel; thence along the Southerly line of said parcel, North  $89^{\circ}56'22''$  West, a distance of 232.53 feet to the Point of Beginning.

3D P  
3E

Parcel 1 of Certificate of Survey No. 12230.

Excepting therefrom public roads and rights of way.

1999216 08450

Parcel 2

That portion of Government Lots 1 and 2 of Section 31, Township 29 North, Range 21 West, P.M.M., Flathead County, Montana, more particularly described as follows:

Commencing at the Northwest corner of Section 31, Township 29 North, Range 21 West; thence along the North line of said Section South  $89^{\circ}49'30''$  East, a distance of 70.00 feet to the Easterly line of U.S. Highway No. 93 right of way; thence along the Easterly line of said right of way South  $00^{\circ}07'10''$  West, a distance of 940.71 feet to the Point of Beginning of the parcel being described; thence leaving said right of way South  $89^{\circ}04'58''$  East, a distance of 464.06 feet; thence South  $30^{\circ}17'34''$  East, a distance of 490.59 feet; thence South  $35^{\circ}16'49''$  West, a distance of 267.08 feet; thence North  $89^{\circ}09'50''$  West, a distance of 558.60 feet to the Easterly line of U.S. Highway No. 93 right of way; thence along the Easterly line of said right of way North  $00^{\circ}07'10''$  East, a distance of 640.91 feet to the Point of Beginning.

Parcel 2 of Certificate of Survey No. 12230.

Parcel 3

That portion of Government Lot 2 of Section 31, Township 29 North, Range 21 West, P.M.M., Flathead County, Montana, more particularly described as follows:

Commencing at the Northwest corner of Section 31, Township 29 North, Range 21 West; thence along the North line of said section, South  $89^{\circ}49'30''$  East, a distance of 70.00 feet to the Easterly line of U.S. Highway No. 93 right of way; thence along the Easterly line of said right of way South  $00^{\circ}07'10''$  West, a distance of 1581.62 feet to the Point of Beginning, thence continuing along the Easterly line of said right of way South  $00^{\circ}07'10''$  West, a distance of 375.02 feet; thence leaving said right of way South  $89^{\circ}58'50''$  East, a distance of 559.91 feet; thence North  $00^{\circ}05'30''$  West, a distance of 367.06 feet; thence North  $89^{\circ}09'50''$  West, a distance 558.60 feet to the Point of Beginning.

Parcel 3 of Certificate of Survey No. 12230.

Excepting therefrom public roads and rights of way.

STATE OF MONTANA  
County of Flathead  
City of Kalispell } SS

I hereby certify that the instrument to which this certificate is affixed is a true, correct and complete copy of the original on file in the office of the Clerk of the City of Kalispell.

Witness my hand and the seal of the City of Kalispell, Flathead County, Montana, this 2nd day of May 1999  
by William White







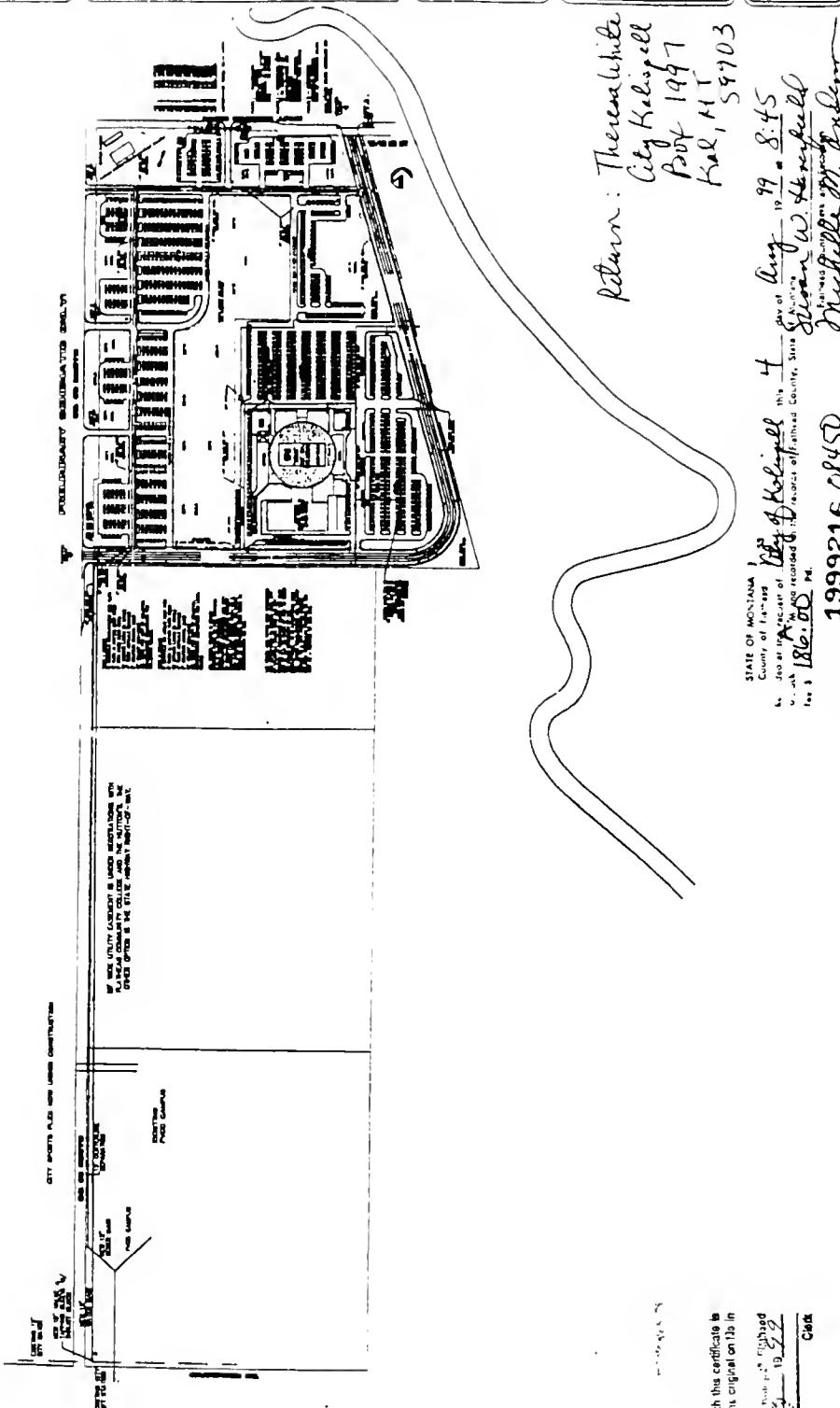
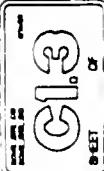
1999216 08450

## **SUBJECT SITE PLAN**

DEVELOPMENT  
DOMESTIC PULL  
MICHIGAN 30 NORTH  
KALISPELL MONTANA

શાલી  
દોષાદીનું અનુભાવ

DRAWN	RAE
CHECKED	TAJ
DATE	8/14/86
SCALE	1:100
JOB#	



Pattern: Therewith  
City Kidwell  
Box 1997  
Hal, HI  
59703

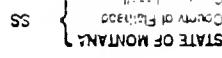
STATE OF MONTANA  
County of ~~186-189~~  
Deed at ~~186-189~~ recd  
Date: ~~186-189~~ M.

# ENGINEERS ESTIMATE INFRASTRUCTURE IMPROVEMENTS

Item	Commercial area 36.95 acres +/-			Domesite area 22.19 acres +/-	
	Estimated actual construction cost	Security amount required @ 1.25 multiplier	Estimated actual construction cost	Security amount required at 1.25 multiplier	
1 12" sewer main ext Grandview to property	\$187,120.00	\$208,800.00			
2 12" water main ext. Grandview to property	\$80,395.00	\$225,494.00			
3 On-site sewer mains lift station & force main w/ emergency generator	\$352,903.00	\$441,129.00			
4 Water well improvements, controls, treatment & emerg. Generator	\$163,760.00	\$204,700.00			
5 On-site water mains, hydrants, valves, etc.	\$194,454.00	\$243,067.00			
6 Perimeter dedicated road with curb and gutter	\$174,336.00	\$217,920.00			
7 Water main loop thru Domesite property with hydrants	\$50,125.00	\$62,656.00			
8 Road storm drain system					
<b>TOTALS</b>	<b>\$1,283,093.00</b>	<b>\$1,603,866.00</b>	<b>\$397,734.00</b>	<b>\$497,169.00</b>	

19926 Q8482

DOME SITE PUD. HWY 93 NORTH  
KALISPELL, MONTANA



### Exhibit C-



*MDT - Pack and Company Land Exchange  
Environmental Review*

***APPENDIX E: PUBLIC INVOLVEMENT AND  
COMMENTS RECEIVED***



## Local News -NUPAC moves ahead after Valleydome demise

By JO ANN SPEELMAN  
The Daily Inter Lake

With proposals for a sports complex or a new fairgrounds at U.S. 93 and Reserve dead, Nupac property owner Jim Lynch is consolidating his 50-plus acres with some state land to create a more marketable package for other developers.

Last Thursday, a memorandum of understanding (MOU) was signed between Lynch and state highway department officials to give the Nupac owner the title to 8.8 acres of state land in the middle of his sand and gravel operation. In return, Lynch will relocate the state's highway maintenance operation on that property to an agree-upon site a couple miles north on U.S. 93.

Lynch operates his Nupac sand, gravel and asphalt business at the Reserve and U.S. 93 site surrounding the state highway maintenance location. In the past three years, there have been two different proposals to buy the Nupac and state sites and build a sportsplex plus some retail space there.

The first local partnership, known as Valleydome, fizzled for apparent lack of funding. The second, known as Domesite, came from Minnesota developer Ron Christenson, who picked up the idea and moved it forward.

His efforts resulted in the property being annexed into Kalispell as well as approval of a master plan change to allow rezoning of the property from industrial to business.

The city and Christenson also entered into a planned unit development agreement that spelled out how the 34 acres nearest the highway would be turned into commercial space. The remaining 25 acres were to be retained by Lynch and be reserved as a sports dome site.

All that was done by early last summer, then began to unravel after Christenson proposed instead relocating the county fairgrounds to the site in return for title to the county's 58 acres at U.S. 2 and Meridian Road.

County commissioners still have made no formal request for proposals to move the fairgrounds. Ultimately, Christenson did not close on the Nupac property which has already been

annexed into the city and zoned for business use.

City Attorney Glen Neier was out of town and not available to comment Friday on what, if any, responsibility Christenson still had because of the developer's agreement obligating him to provide city utilities to the Nupac site.

Meanwhile, Jackola Engineering and Architecture, which was involved in the Valleydome proposal and later with Christenson, has filed a lien against Nupac, alleging lack of payment for professional services in the proposal.

That prompted Lynch to file a complaint against Jackola, claiming the engineering and architectural work done on Valleydome and/or Domesite were with developers and not him.

Both matters remain unresolved.

Lynch said last week that others have shown interest in his property.

"It made sense for me to acquire the state land since it is in the middle of mine. So I have been working with the state highway department to complete a trade that was originally part of both the Valleydome and Christenson plans."

With a MOU in place, there now must be environmental assessment and traffic studies completed and a public comment period advertised.

Unless some unforeseen snags develop to stop the trade, Lynch would then cover the costs to move the state's highway maintenance operation to the new site on the east side of U.S. 93 across from Northern Pines golf course.

## For Publication in 7/21/00 Daily Interlake

### Notice of Availability MDT - Pack and Company Land Exchange EA

An Environmental Assessment (EA) was recently prepared for a proposed land exchange between the Montana Department of Transportation (MDT) and Pack and Company (Pack). The proposed land exchange involves properties in both Flathead County and the City of Kalispell.

Under the proposal, MDT would acquire an undeveloped 8.946-acre tract owned by Pack in exchange for 8.88 acres of MDT land adjacent to the NUPAC Sand and Gravel Company (a subsidiary of Pack). MDT's property (locally known as the Hutton Pit) currently serves as a storage area for road maintenance materials and equipment and as a base for field engineering operations. The proposed action would require that MDT's maintenance equipment, facilities, and stockpiled materials be moved from the Hutton Pit site to a new site about one mile to the north along U.S. Highway 93. The costs and actions necessary to make the property suitable for MDT's operations and for relocating MDT's existing equipment, facilities, and stockpiled materials would be Pack's responsibility.

The proposed exchange would allow Pack to consolidate landholdings near the NUPAC Sand and Gravel Company and develop the property (NUPAC's existing land plus the Hutton Pit property) for commercial uses. The phased development of a retail shopping complex and a multi-purpose coliseum has been proposed for this area. .

Prior to making any decision regarding the proposal, MDT is requesting public comments on the EA that evaluates the issues relevant to the land exchange. Copies of the EA are available for review at several locations including:

Flathead County Library (247 1st Ave E), Kalispell

NUPAC Sand and Gravel (2355 Highway 93 North), Kalispell

MDT Area Office (85 5th Ave E), Kalispell

MDT Environmental Services, Helena

Written comments on the EA will be received through August 21, 2000 and should be sent to the following address. Copies of the EA may also be obtained through written requests to the address below.

Daniel M. Norderud, AICP  
Robert Peccia & Associates, Inc.  
P.O. Box 5653  
Helena, MT 59604



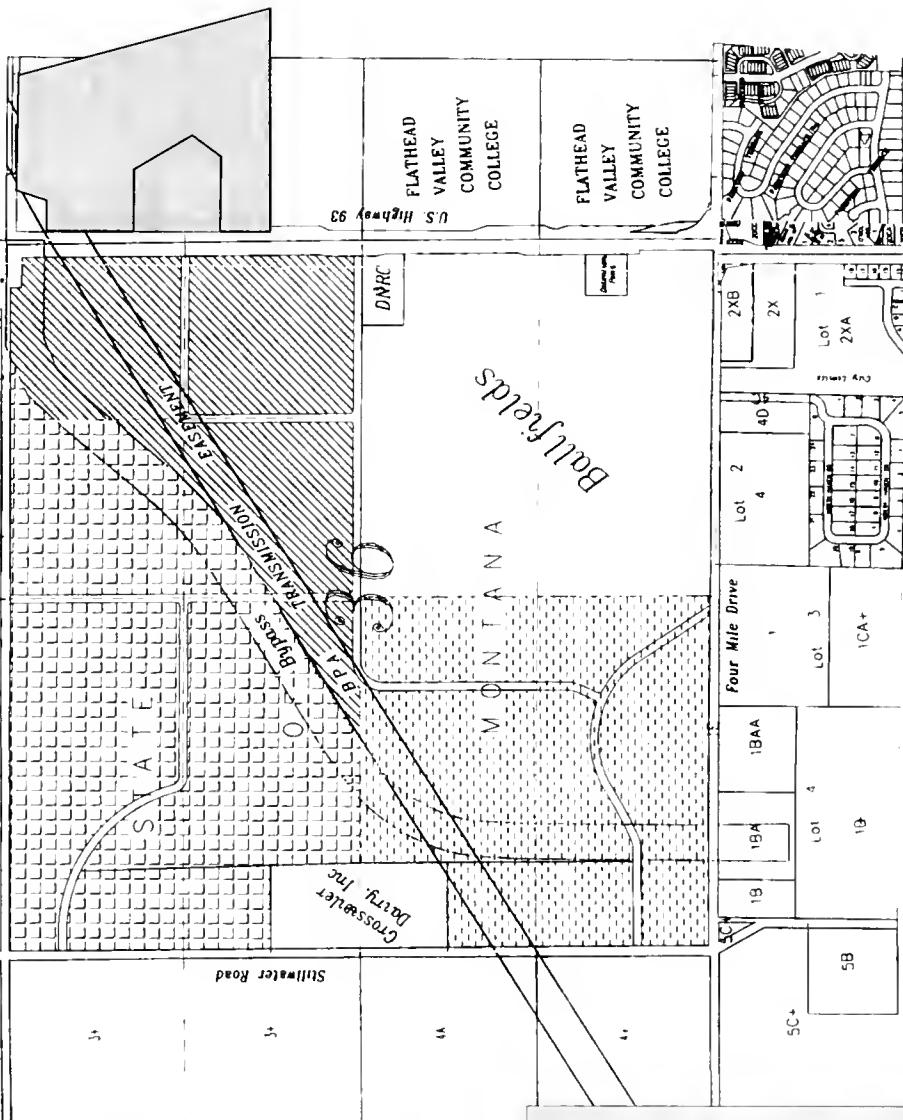
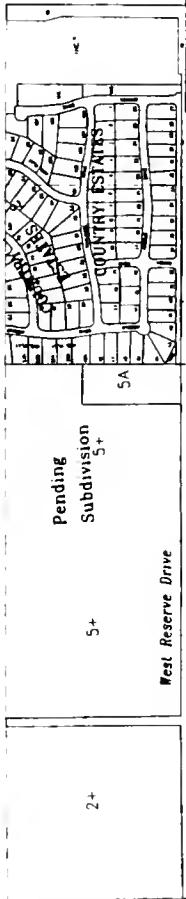
*MDT - Pack and Company Land Exchange  
Environmental Review*

***APPENDIX F: LAND USE PLAN FOR  
STATE SCHOOL TRUST LAND***



## Section 36 Land Use PODS

### Section 36, Twp 29N, Rng 22W, Flathead County



**MDT Hutton Pit Property**  
**NUPAC Land**

Mixed Commercial  
 Mixed Professional  
 Mixed Residential

R22W

**Proposed Land Use Plan**  
**for School Trust Property**





# Revenue se coal tax Wednesday

# Lawsuit challenges state's development plan

**Plaintiffs say state needs to file an EIS**

That information had previously been available to the public since 1975 when the coal severance tax was created.

The department contended the coal industry has a privacy right that must be protected. It said disclosing information about coal prices and taxes could hurt Montana coal companies financially in a highly competitive market. But the Supreme Court, in overturning a lower-court ruling in favor of the department, agreed with the news media that declaring the information secret violates the public's constitutional right to know.

Bryson said the department has some worry that the ruling could be construed as making all sorts of other tax information public.

However, the agency still maintains that details about payments of other taxes — such as oil and gas severance, telecommunications, liquor license, cigarettes and motel rooms — are still confidential, she said. Those records differ from the coal tax files because they have never been avail-

**By BOB ANEZ**  
*Associated Press Writer.*

**HELENA (AP) —** Two organizations asked for a court order Tuesday barring the state Land Board and Department of Natural Resources and Conservation from developing a piece of state land near Kalispell without first preparing an environmental study.

The lawsuit said the agency will violate state law if it proceeds to lease some of the property for commercial or residential use without analyzing the environmental, social and economic consequences of the action and considering alternatives to development.

"We're committed to site-specific review before we change any land use up there," said Tom Butler, attorney for the agency. "Gosh, where is the inadequacy of that?"

The complaint was filed in District Court here by the Montana Environmental Information Center and Citizens for a Better Flathead. The state's plan for conducting an environmental analysis of individual leases of the land as they arise is inadequate to meet requirements of the Montana Environmental Protection Act, or MEPA, the suit said.

"Comprehensive environmental review is required on the entire proposed development," it said.

A department spokesman said the proposed analysis process complies with the law and no study of the overall development plan is necessary before leasing begins.

"We're committed to site-specific review before we change any land use up there," said Tom Butler, attorney for the agency. "Gosh, where is the inadequacy of that?"

"The appropriate MEPA review will occur at each stage that either the board or department proposes a new use on that tract," he said.

Anne Hedges of the Environmental Information Center said the suit has far-reaching implications beyond how this project is handled. The outcome of this case may dictate how future development of state property is handled, she said. "This is very precedent-setting," she said. "The state is just getting into the arena of developing state land near urban areas, and we want to get into a pattern of making sure these developments are adequately analyzed before changing their use to commercial, industrial and residential."

The suit said the planned changes for the land will affect traffic, noise and air pollution, available open space, and existing residential and commercial property in the Kalispell area.

"Those consequences had yet to be analyzed and disclosed to the public before the project was approved in its present form," the suit said.

suffered a fall that nearly cost him one leg.

The race offers little if cash prizes but is known as the "Race of Truth" in hardcore cycling circles. The team raised \$20,000 to compete.

# Butte team cracks record in cross-country bike race

**GULF BREEZE ISLAND, Fla. (AP) —** A Montanan and a Californian set a new record for two-man bike teams in their age division as they won the 2,975-mile Race Across America.

Dwight Bishop, 44, Butte,

and William Maida, 49, of Eng-

land cracked the record by

chance to eat a real meal and get some quality sleep each night.

This was the second time

Bishop competed in the event. In 1993 he entered as a solo rider, but dropped out after 740 miles. In 1994 he

had a mechanical problem

and had to withdraw.





